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Attorney for Plaintiff THOMAS NIEDERREUTHER

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

THOMAS E. NIEDERREUTHER,

Plaintiff,

vs.

CITY OF ATWATER, a public entity,

Defendant

Case No.

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF

1. Age Discrimination in Violation of the
ADEA

2. Age Discrimination in Violation of the
FEHA

3. Retaliation

4. Breach of Contract

Jury Trial Demanded

Plaintiff THOMAS E. NIEDERREUTHER (hereafter "Plaintiff") complains as follows:

Parties

1. Plaintiff is, and at all times mentioned herein was, an individual residing in the City of Modesto, Stanislaus County, California.

- 1 2. Atwater Police Department (hereafter "APD") is, and at all times mentioned herein was, a
2 public agency controlled, operated, and managed by Defendant CITY OF ATWATER.
3 The APD and City of Atwater are based in located in Merced County, California.
4
- 5 3. Relief is sought against the named Defendant as well as its agents, assistants, successors,
6 assigns, employees, and persons acting in concert or cooperation with or at the direction
7 or under the supervision of the named Defendant.
- 8 4. At all times herein, Plaintiff was duly qualified and did perform all duties and
9 responsibilities on his part, which duties and responsibilities were part of the application
10 process for employment with Defendant.
11
- 12 5. Plaintiff was, at all relevant times herein, an applicant for employment covered by 29
13 U.S.C. §261 and California Government Code §12940 prohibiting discrimination and
14 retaliation in the employment application process.
- 15 6. Defendant City of Atwater is, and at all relevant times herein mentioned was, an
16 employer within the meaning of 29 U.S.C. §261 and California Government Code
17 §12926(d) and, as such, was and is, statutorily prohibited from discriminating and
18 retaliating in employment decisions on the bases set forth in the aforementioned statutes.
19
- 20 7. Plaintiff has met all jurisdictional requirements, where applicable, for proceeding with his
21 claims. Plaintiff timely filed an administrative complaint with the Department of Fair
22 Employment and Housing and received a Right to Sue letter from DFEH dated March 5,
23 2019. Plaintiff also timely received a Notice of Right to Sue from the US EEOC dated
24 March 6, 2019. True and correct copies of the Right to Sue notices are attached hereto as
25 Exhibits 1 and 2, respectively. Plaintiff also filed a timely Cal. Gov. Code section 910
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28

1 Claim form with the City, which was rejected less than six months prior to the filing of
2 this Complaint.

3 Jurisdiction and Venue
4

- 5 8. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §1331 in that Plaintiff's
6 claims arise under 29 U.S.C. §621 et seq., U.S. Constitution, amend XIV §1, and 29
7 U.S.C. 201 et seq. Additionally, this court has supplemental jurisdiction pursuant to 27
8 U.S.C. §1367 over those claims arising under California statutory and common-law.
9
10 9. This is a district of proper venue. Plaintiff resides in Stanislaus County, Defendant is
11 based in Merced County, and the discriminatory and related acts occurred there. Merced
12 County and Stanislaus County are part of the Fresno Division of the Eastern District of
13 California.

14 General Allegations
15

- 16 10. Plaintiff worked as both a reserve police officer and a regular police officer for the City
17 of Atwater ("City") for a total of five years. He was continuously employed by the City
18 from January 28, 2011 through February 4, 2016, when he was abruptly terminated
19 "without cause" on the pretext of a "probation failure". The true facts are that Plaintiff
20 had been subjected to a pattern of age discrimination and harassment by a rogue sergeant,
21 William Novetzke, who eventually orchestrated his termination. Plaintiff sued for
22 reinstatement and damages in this court (Thomas E. Niederreuther v. City of Atwater, et
23 al., Case No. 1:16-cv-00827-DAD-EPG, filing date June 1, 2016. "The Underlying
24 Case"). Plaintiff's primary litigation goal was to be reinstated.
25
26 11. The parties to the Underlying Case exchanged documents and witness lists, but no
27 formal discovery was conducted. On September 15, 2016 a Status Conference was held
28

1 and the Underlying Case was ordered to mediation. On December 1, 2016, a mediation
2 was held in the Underlying Case before retired Judge Hurl Johnson. At the mediation,
3 the City refused to offer reinstatement and would only offer a monetary settlement.
4 Plaintiff was aware that the current City Manager, Frank Pietro, was retiring and that
5 Plaintiff's friend and former Chief from another police department, Art de Werk was a
6 likely lead contender to replace the current City Manager. Plaintiff also knew that the
7 likely change in management would most probably also result in his eventual
8 reinstatement. Accordingly, rather than continue to pursue costly litigation with the
9 current City Management, Plaintiff was persuaded to accept a monetary settlement. The
10 proposed settlement agreement was presented and reviewed during the mediation and it
11 provided and all parties were aware, that it could be amended in writing at any time in the
12 future by mutual agreement of the parties.
13
14

15 12. The Underlying Case settled at the Mediation with the City agreeing to pay Plaintiff
16 \$60,000 in exchange for a release of all claims. A true and correct copy of the Settlement
17 Agreement is attached hereto as Exhibit 3. In addition to the release of all claims,
18 Plaintiff also agreed not to seek re-employment by the City, see paragraph 7 of the
19 Settlement Agreement. Paragraph 7 also provides that it can be "... waived by explicit
20 written consent of the Parties..."
21
22

23 13. On or about January 2, 2018, Plaintiff's friend and former chief, Art de Werk was hired
24 as the Interim City Manager. De Werk was tasked with ferreting out corruption, which
25 had plagued the City for some time, and dealing with its poor financial condition. Based
26 upon his investigation, de Werk concluded that the harassment and termination of
27 Plaintiff was "part and parcel" of a systemic corruption in the Police Department and the
28

1 City as a whole. One symptom of that corruption was terminating and/or disciplining
2 good employees while favoring unethical, incompetent, and even criminal employees, so
3 long as they catered to the whims of the corrupt management.
4

5 14. On or about January 20, 2018 de Werk removed Police Chief, Samuel Joseph and placed
6 him on paid administrative leave. De Werk suspected that Joseph was a “kingpin” of the
7 corruption within the City and the police union voted “no confidence” on Joseph by an
8 overwhelming margin. De Werk also promoted Sergeant Echevarria to Interim Chief of
9 Police and engaged an outside firm to conduct a “management review” of all City
10 employees. Guns, money and drugs were missing from the police evidence room,
11 eventually leading to its closure and an in depth Department of Justice Investigation.
12 Former Chief and City Manager, Pietro, had allowed his long term mistress, Tyna
13 Lamison, to “run” the Evidence Room unsupervised and without checks and balances or
14 appropriate procedures, causing these “irregularities”. The new Chief, Samuel Joseph, a
15 “protégé” of Pietro, failed to do anything to correct the problem. As discussed below,
16 Joseph was eventually terminated by a subsequent City Manager for a litany of
17 incompetent, unethical and even criminal acts.
18
19

20 15. On or about January 22, 2018, Plaintiff’s former Administrative Sergeant, Dick Wisdom,
21 now retired, sent a letter to de Werk in support of Plaintiff’s reinstatement. A true and
22 correct copy of said letter is attached hereto as Exhibit 4. The letter saliently points out
23 that Plaintiff was the victim of discrimination and harassment by Novetzke and how
24 Novetzke orchestrated Plaintiff’s termination. Wisdom also lauds Plaintiff’s job
25 performance as “equal to, and in some cases better than his peers (none of whom were
26 terminated)”. Wisdom also clarifies that neither he, nor the other three sergeants were
27
28

1 aware of the impending termination of Plaintiff and that they agreed with his assessment
2 of Plaintiff's job performance and that he should not have been terminated.

3
4 16. In discussions with Plaintiff during said time period, de Werk said he would reinstate
5 Plaintiff to his former Police Officer position at some point in the near future, provided
6 that Plaintiff agreed to reimburse the \$60,000 settlement sum to the City. Plaintiff told
7 de Werk he had no problem reimbursing the City the \$60,000. De Werk also advised that
8 as a matter of correct protocol, a reinstatement request should first be directed to Interim
9 Chief Echevarria.

10
11 17. On or about February 8, 2018, Plaintiff delivered a letter to Interim Chief Echevarria
12 requesting reinstatement and outlining the pertinent facts in support thereof. A true and
13 correct of said letter is attached hereto as Exhibit 5. Plaintiff thereafter met with
14 Echevarria. Echevarria said he also supported Plaintiff's reinstatement and would move
15 forward as soon as he got the go ahead from de Werk. In follow up discussions between
16 de Werk and Plaintiff, de Werk advised that due to the existing political and media
17 environment at the time, he wanted to complete the outside management review and
18 resolve former chief Joseph's employment status prior to reinstating Plaintiff. De Werk
19 assured Plaintiff that he would be reinstated, but that it would be best to wait until the
20 right time.
21

22
23 18. In late March of 2018, de Werk advised Plaintiff that he was considering resigning from
24 his Interim City Manager position, but still wanted to facilitate Plaintiff's reinstatement,
25 as best he could. Plaintiff drafted an "Amendment to Confidential Settlement and General
26 Release". A true and correct copy of which is attached hereto as Exhibit 6. Said
27
28

1 Amendment was fully executed by de Werk and Plaintiff prior to de Werk's resignation
2 as Interim City Manager. Plaintiff emailed signed copies back to de Werk and
3 Echevarria's City email. The Amendment complied with the express requirements of
4 paragraph 7 of the original Settlement Agreement. Moreover, the Amendment was in fact
5 a contractual amendment, supported by mutual consideration, which included, but was
6 not limited to Plaintiff's offering his valuable skills and services to the City in exchange
7 for their agreement to allow him complete and fair testing for renewed employment.
8

9
10 19. De Werk had recommended City employee, Lori Waterman, to the City Council to
11 replace him as Interim City Manager. Waterman was promoted to that position by the
12 City Council during or about the first week of April 2018. De Werk subsequently emailed
13 Waterman and recommended that she reinstate Plaintiff.

14
15 20. In or about May of 2018, at Plaintiff's request, Interim Chief Echevarria spoke with
16 Waterman about the Amendment and his desire to reinstate Plaintiff. Waterman said she
17 would consider reinstating Plaintiff after the Joseph employment issue was resolved.
18 Waterman had continued to keep Joseph on administrative leave and after he refused to
19 resign, she initiated a formal Internal Affairs investigation into his misconduct.

20
21 21. On or about the beginning of June 2018, Plaintiff saw media coverage in a local
22 newspaper indicating that Waterman was going to replace Interim Chief Echevarria. In
23 light of this new development, Plaintiff decided to file a formal employment application
24 and thereby putting the City in position in which it would either have to perform as
25 agreed or breach and repudiate the Amendment and Settlement Agreement, as amended.

26
27 22. Plaintiff filed an Application for the position of Police Officer and/or Reserve Police
28 Officer on or about June 13, 2018. Plaintiff included a copy of the signed Amendment to

1 the Settlement Agreement with his application and cover letters. Said application, cover
2 letters and accompanying documents are attached hereto as Exhibit 7. Interim Chief
3 Echevarria told Plaintiff that his application had been placed in the “eligible folder” by
4 Human Resources and that Plaintiff would be able to test with the other eligible
5 applicants in the near future.
6

7 23. In August of 2018, Waterman removed Echevarria from the Chief position and hired
8 Drew Bessinger from Clovis to become the Interim Chief. Also in August 2018, the City
9 Council appointed Waterman to the permanent City Manager position.
10

11 24. On or about August 20, 2018, retired Administrative Sergeant Dick Wisdom sent another
12 letter supporting Plaintiff’s reinstatement to Bessinger and Waterman. A true and correct
13 copy of said letter is attached as Exhibit 8. The text of the new letter was the same as the
14 letter Wisdom wrote de Werk in February (see Exhibit 4). Bessinger sent a letter to
15 Wisdom in reply dated August 22, 2018, a true and correct copy is attached as Exhibit 9.
16 In addition to chastising Wisdom for blaming Novetzke for orchestrating Plaintiff’s
17 termination, Bessinger wrote: “When and if Mr. Niederreuther applies for employment, I
18 will consider his application as I would any other. You are free to tell him that if you’d
19 like.” Wisdom promptly called Plaintiff and told him what Bessinger had written.
20 Apparently Bessinger was either unaware that Plaintiff had applied for employment back
21 in June of 2018 or was pretending to be unaware.
22

23
24 25. Late in August of 2018, Plaintiff was told by Administrative Sergeant Snyder that Chief
25 Bessinger had agreed to move forward with the hiring process using the existing
26 eligibility list, in which Plaintiff’s application was included.
27
28

- 1 26. On September 5, 2018, at approximately 316 pm, Plaintiff received a voice mail from
2 Sergeant Snyder stating that if he is still interested in the position ,per Chief Bessinger ,he
3 should provide an updated resume and Personal History Statement no later than 8 am on
4 September 20, 2018. Plaintiff saved the voice mail. Plaintiff called Snyder after work the
5 same day, and Snyder told him to disregard the voice mail and “standby”.
- 6
- 7 27. The next day on September 6, 2018, Plaintiff received a letter via email from City
8 Manager, Waterman stating he was not eligible to apply based on the original Settlement
9 Agreement. A copy of said letter is attached hereto as Exhibit 10. Waterman made no
10 mention of the Amendment signed by her predecessor, de Werk, in her letter.
- 11
- 12 28. Plaintiff wrote Waterman back on September 13, 2018 asking her why she ignored the
13 Amendment and asked for an explanation. A true and correct copy of said letter is
14 attached as Exhibit 11. Waterman never responded. As Plaintiff stated in his letter to
15 Waterman, in the absence of a benign explanation, he was forced to infer that the
16 rejection of his application was motivated by ongoing malignant age animus and/or
17 retaliation for his asserting his age related rights against the City in his prior lawsuit.
- 18
- 19 29. On November 15, 2018 Waterman finally terminated ex- Chief Joseph. Attached as
20 Exhibit 12 is a true and correct copy of Waterman’s termination letter to Joseph. The
21 letter details the conclusions of the internal affairs Investigation. (Page 4) Felonious
22 issuance of a high capacity magazine firearm to a civilian who failed a psychological
23 examination. (Page 5) Willful refusal to secure Evidence, thereby jeopardizing countless
24 criminal cases. (Page 6) Ordering a subordinate officer to steal documents from the
25 Finance Department and to disseminate defamatory material against the City Manager.
- 26
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(Page 7) Bullying, harassing and threatening officers; also questioning them about protected Union meetings: using City computers to insult offend and demean employees.(Page 8) Kept a firearm, internal affairs documents, background investigation documents, etc. in an unsecured, unlocked locker where numerous people had unfettered access, including custodians and clerical staff. Also leaked attorney client privileged documents generated by the City Attorney to the media for his own personal gain.(Page 9) Hiring a convicted felon as a police officer and improperly influencing a background investigation.

30. In March of 2019, Plaintiff's friend, Frank Johnson (a local activist well known in Atwater) met with Waterman and Councilwoman Cindy Vierra to discuss his list of issues with the City. Johnson asked Waterman and Vierra why they won't reinstate Plaintiff or allow him to test with other applicants. A primary reason the women cited was that "Risk Management won't cover him". When Johnson reported this to Plaintiff, it only further confirmed his conclusions that the City was using his age combined with his prior assertion of his age related rights as a reason to discriminate against him in the recent hiring process. In essence, it's bad risk to hire old people, especially ones that have previously asserted their age related rights.

FIRST CAUSE OF ACTION

Age Discrimination in Violation of the Age Discrimination in Employment Act
(29 U.S.C. §621, et seq.)

31. Plaintiff re-alleges and incorporates herein by reference all of the prior allegations stated above as though fully set forth herein and with the same force and effect.

1 32. Pursuant to 29 U.S.C. §621 et seq. applicants for employment and employees aged 40 or
2 older are protected from employment discrimination on the basis of their age.

3 33. Defendant City of Atwater pursuant to the above described conduct discriminated against
4 Plaintiff and took adverse employment actions against Plaintiff, including but not limited
5 to, the refusal to acknowledge the Amendment to the settlement of the Underlying Case
6 allowing Plaintiff to reapply for the position of peace officer and the refusal to allow
7 Plaintiff to participate in the application process on the basis of his age and in furtherance
8 of an ongoing campaign of discrimination against Plaintiff on the basis of his age.
9

10 34. At the time Plaintiff submitted his application for employment as a peace officer with the
11 City of Atwater in June 2018 and continuing through the present, Plaintiff remains
12 qualified and able to satisfactorily perform the duties of a peace officer.
13

14 35. Plaintiff was 56 at the time of the adverse employment action, as described above.

15 36. Defendant took the aforementioned adverse actions against Plaintiff because of his age.

16 37. Defendant's managers, employees and/or agents engaged in the discriminatory conduct
17 alleged herein against Plaintiff with the intent to harm Plaintiff. As described above,
18 Defendant's representatives engaged in inappropriate and discriminatory conduct
19 motivated by Plaintiff's age.
20

21 38. As a direct and proximate result of defendant's wrongful conduct, Plaintiff has suffered
22 past and future special damages and past and future general damages in an amount
23 according to proof at trial. Defendant has damaged Plaintiff's financial and economic
24 standing, reputation, and emotional well-being and has additionally caused Plaintiff to
25 suffer loss of income, employment, or career benefits, and emotional distress, suffering
26 and ridicule among other damages in an amount according to proof at trial.
27
28

1 39. Plaintiff has incurred and continues to incur legal expenses and attorney's fees and is
2 entitled to recover such reasonable expenses and fees in an amount according to proof at
3 trial.
4

5 SECOND CAUSE OF ACTION

6 Age Discrimination in Violation of the California Fair Employment and Housing Act
7 (California Government Code §12940 et seq.)

8 40. Plaintiff re-alleges and incorporates herein by reference all of the prior allegations stated
9 above as though fully set forth herein and with the same force and effect.

10 41. Pursuant to California Government Code §12940(a), it is an unlawful employment
11 practice for an employer to deny a job applicant fair consideration of the job application
12 because of the employee's age.
13

14 42. Defendant City of Atwater violated California Government Code §12940(a), pursuant to
15 the above described conduct, including but not limited to, the refusal to acknowledge the
16 Amendment to the settlement of the Underlying Case allowing Plaintiff to reapply for the
17 position of peace officer and the refusal to allow Plaintiff to participate in the application
18 process on the basis of his age and in furtherance of an ongoing campaign of
19 discrimination against Plaintiff on the basis of his age.
20

21 43. Plaintiff was 56 at the time of the adverse employment actions, as described above.

22 44. As a direct and proximate result of defendant's wrongful conduct, Plaintiff has suffered
23 past and future special damages and past and future general damages in an amount
24 according to proof at trial. Defendant has damaged Plaintiff's financial and economic
25 standing, reputation, and emotional well-being and has additionally caused Plaintiff to
26
27
28

suffer loss of income, employment, or career benefits, and emotional distress, suffering and ridicule among other damages in an amount according to proof at trial.

45. Plaintiff has incurred and continues to incur legal expenses and attorney's fees and is entitled to recover such reasonable expenses and fees in an amount according to proof at trial.

THIRD CAUSE OF ACTION

Retaliation By Employer For Protected Activity Under the ADEA and FEHA (29 U.S.C. 621 et seq. and Cal. Gov't Code §12940 et seq.))

46. Plaintiff re-alleges and incorporates herein by reference all of the prior allegations stated above as though fully set forth herein and with the same force and effect.

47. Plaintiff's prosecution of the Underlying Case for the age related workplace harassment and discrimination that he suffered at the hands of Defendant while employed as a peace officer is protected activity under the ADEA and FEHA.

48. Following settlement of the Underlying Case, Defendant took material adverse action against Plaintiff, including but not limited to, the refusal to acknowledge the Amendment to the settlement of the Underlying Case allowing Plaintiff to reapply for the position of peace officer and the refusal to allow Plaintiff to participate in the application process.

49. Plaintiff is informed and believes and thereon alleges that Defendant's negative actions described in the preceding paragraph were in retaliation for Defendant's prosecution of the Underlying Case and in furtherance of an ongoing campaign of age-based discrimination against Plaintiff.

50. As a direct and proximate result of defendant's wrongful conduct Plaintiff has suffered past and future special damages and past and future general damages in an amount

1 according to proof at trial. Defendant has damaged Plaintiff's financial and economic
2 standing, reputation, and emotional well-being and has additionally caused Plaintiff to
3 suffer loss of income, employment, or career benefits, and emotional distress, suffering
4 and ridicule among other damages in an amount according to proof at trial.

5
6 51. Plaintiff has incurred and continues to incur legal expenses and attorney's fees and is
7 entitled to recover such reasonable expenses and fees in an amount according to proof at
8 trial.

9
10 FOURTH CAUSE OF ACTION

11 Breach of Contract

12 52. Plaintiff re-alleges and incorporates herein by reference all of the prior allegations stated
13 above as though fully set forth herein and with the same force and effect.

14
15 53. As alleged above, on or about March 28, 2018, Plaintiff and Defendant-by and through
16 its City Manager, Art de Werk, entered into a written Amendment of the Settlement
17 Agreement for the Underlying Case whereby Defendant agreed to waive the term in the
18 original settlement agreement barring Plaintiff from re--applying for a position as a peace
19 officer.

20
21 54. Defendant breached the original Settlement Agreement and the Amendment by deeming
22 Plaintiff to be ineligible to re-apply for a peace officer position and refusing to allow
23 Plaintiff to participate in the testing and other processes of the application protocol.

24
25 55. Plaintiff has dutifully performed all of his obligations under the original Settlement
26 Agreement and the Amendment, except for those terms that have been discharged or
27 excused as a result of Defendant's breaches.

1 56. As a result of Defendant's breaches as alleged herein, Plaintiff has suffered monetary loss
2 including lost pay and other employment benefits.

3 57. As an additional consequence of Defendant's failure to honor the Settlement Agreement,
4 as amended, Plaintiff has lost the opportunity for a peace officer position with the City of
5 Atwater which he covets and which has significant personal meaning for him. As such,
6 monetary damages are inadequate compensation for Defendant's breaches justifying
7 specific performance of the parties' agreements.
8

9
10 PRAYER FOR RELIEF

11 WHEREFORE, Plaintiff prays for relief against Defendant as follows:

- 12 1. For general and special damages in an amount according to proof.
- 13 2. For compensatory damages, including but not limited to lost pay and other
14 monetary benefits of employment in an amount according to proof at trial.
- 15 3. For an order compelling Defendant to reinstate Plaintiff to a police officer
16 position , or in the alternative , an order compelling Defendant to allow Plaintiff to re-apply for a
17 position as a peace officer and to participate in the application process to the same extent as any
18 other eligible applicant.
- 19 4. For statutory damages and liquidated damages in amounts according to proof at
20 trial.
- 21 5. For pre-and post-judgment interest according to proof.
- 22 6 For attorney's fees and costs of suit
- 23
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- 27
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7. For such other and further relief as the Court may deem just and proper.

Dated: June 3, 2019

LAW OFFICE OF KEITH M. VELLECA


By: 
Keith M. Velleca, Attorney for Plaintiff
Thomas E. Niederreuther.

EXHIBIT 1



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

GOVERNOR
KEVIN KISH, DIRECTOR

March 5, 2019

Thomas Niederreuther
2837 Scenic Bend
Modesto, CA 95355

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 201903-05345105
Right to Sue: Niederreuther / City Of Atwater

Dear Thomas Niederreuther,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective March 1, 2019 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

EXHIBIT 2

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Case 1:19-cv-00779-DAD-BAM Document 1 Filed 06/03/19 Page 20 of 98

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: **Thomas E. Niederreuther**
2837 Scenic Bend
Modesto, CA 95355

From: **San Jose Local Office**
96 North Third Street
Suite 250
San Jose, CA 95112



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

556-2019-00444

Lisa B. Fung,
Investigator

(408) 291-4247

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)



More than 180 days have passed since the filing of this charge.



Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.



The EEOC is terminating its processing of this charge.



The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, **the paragraph marked below applies to your case:**



The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice**. Otherwise, your right to sue based on the above-numbered charge will be lost.

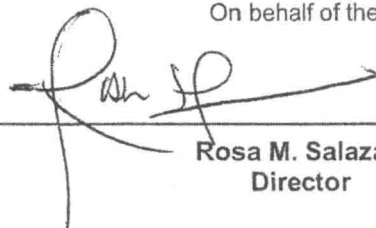


The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible**.

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission



Rosa M. Salazar,
Director

March 6, 2019

(Date Mailed)

Enclosures(s)

CC: **Lori Waterman, City Manager**
CITY OF ATWATER
750 Bellevue Road
Atwater, CA 95301

INFORMATION RELATED TO FILING SUIT
UNDER THE LAWS ENFORCED BY THE EEOC

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)*

**PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),
the Genetic Information Nondiscrimination Act (GINA), or the Age
Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Courts often require that a copy of your charge must be attached to the complaint you file in court. If so, you should remove your birth date from the charge. Some courts will not accept your complaint where the charge includes a date of birth. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10 – not 12/1/10** -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

EXHIBIT 3

CONFIDENTIAL SETTLEMENT AGREEMENT
AND GENERAL RELEASE

This Confidential Settlement Agreement and General Release ("Agreement") is made and entered into between THOMAS NIEDERREUTHER ("Plaintiff") and the CITY OF ATWATER (the "City"). This Agreement is made pursuant to the following terms and conditions.

1. Pending and Future Legal or Administrative Actions.

Plaintiff represents there are no actions, whether in court, before any agency or otherwise, asserting claims by or on behalf of Plaintiff against the City, its affiliated organizations, present or former agents, attorneys, councilmembers, employees, insurance carriers, successors and assigns, including but not limited to William Novetzke, (collectively "Releasees") other than Plaintiff's lawsuit pending in the United States District Court for the Eastern District of California - Fresno Division, entitled "*Thomas Niederreuther v. City of Atwater and William Novetzke, et al.*," Case No. 1:16-CV-00827-DAD-EPG (the "Action").

2. General Release of Claims and Affirmations.

2.1 It is understood and agreed by and between the parties to this Agreement that in consideration for the City's agreement as set forth in paragraph 3 of the Agreement, and the other promises contained herein, Plaintiff completely releases and forever discharges Releasees from all causes of action, claims, judgments, obligations, damages, and liabilities of whatever kind and character, including, but not limited to, those claims that are asserted or that could have been asserted in the Action, and those arising under the Employee Retirement Income Security Act of 1974; the Americans with Disabilities Act; Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Civil Rights Act of 1866 (42 U.S.C. § 1981); the Civil Rights Act of 1871 (42 U.S.C. §§ 1985 and 1986); the Equal Pay Act of 1963; the Consolidated Omnibus Budget Reconciliation Act of 1985; the California Fair Employment and Housing Act, Gov. Code §§ 12940 *et seq.*; applicable California Wage Order provisions; the California Business and Professions Code §§ 17200 *et seq.*; the California Civil Code; the California Labor Code; and any other federal, state, or local insurance, human rights, civil rights, wage-hour, pension, or labor laws, rules and/or regulations, public policy, contract or tort laws, and any claim of retaliation under such laws, and any claim arising under common law including, but not limited to, causes of action for wrongful termination; constructive discharge; discrimination or harassment on the basis of age, sex, sexual orientation, religion, marital status, taking a leave of absence, race, disability or national origin or retaliation for opposing such discriminatory practice; intentional infliction of emotional distress; negligent infliction of emotional distress; fraudulent misrepresentation; negligent misrepresentation; fraud; invasion of privacy; false imprisonment; conspiracy to commit any act mentioned herein; breach of contract (whether oral or written, express or implied); breach of the implied covenant of good faith and fair dealing; interference with business advantage; defamation; interference with prospective economic advantage; interference with contractual relationship; violation of any national, state or local statute, law, or ordinance; wrongful termination in violation of public policy; and any other action, whether cognizable in law or in equity based upon any conduct up to and including the



City



Plaintiff

date of this Agreement, and Plaintiff agrees that he will not, from any source or proceeding, seek or accept any award or settlement therefrom. In the event Plaintiff institutes or is a party to any action or proceeding asserting a claim released in this Agreement, such action or proceeding shall be dismissed with prejudice, with an award of attorneys' fees and costs to the subject Releasee(s) incurred as a result of such action or proceeding, immediately upon presentation of this Agreement.

2.2 Plaintiff represents and warrants that Plaintiff has not assigned or subrogated any claim concerning Releasees or authorized any other person or entity to assert such a claim or claims on Plaintiff's behalf. Plaintiff will take all actions necessary to obtain dismissal of any claim asserted by any other individual or entity against any Releasee on Plaintiff's behalf and will not accept relief or recovery from any action that is not dismissed.

2.3 Plaintiff further agrees to waive any claim for damages occurring at any time after the date of this Agreement because of alleged continuing effects of any alleged discriminatory or other wrongful acts or omissions involving any Releasee, which occurred on or before the date of this Agreement. Plaintiff further agrees to waive any right Plaintiff may have to sue for injunctive relief against the alleged continuing effects of any alleged discriminatory or other wrongful acts or omissions occurring prior to and including the date of this Agreement.

2.4 Nothing in this Agreement prohibits or prevents Plaintiff from filing a charge or participating, testifying or assisting in any investigation, hearing or other proceeding before any federal, state, or local government agency. However, to the maximum extent permitted by law, Plaintiff agrees that if such an administrative claim is made, Plaintiff shall not be entitled to recover any individual monetary relief or other individual remedies.

2.5 To the extent permitted by law, Plaintiff waives any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on such a claim in which any Releasee is a party. Plaintiff shall take any necessary steps to dismiss himself from any class claims, including but not limited to opting-out of such claims.

2.6 Plaintiff affirms that Plaintiff has not divulged any confidential information of any Releasee and will continue to maintain the confidentiality of such information consistent with the City's policies and agreements(s) and/or common law.

2.7 Other than the settlement sum in paragraph 3, Plaintiff agrees and represents that no other form of monetary compensation is owed to him by any Releasee as of the date he executes this Agreement and that all employment-related compensation has been paid by any Releasee.

2.8 Plaintiff agrees to defend, indemnify and hold harmless the City for any liability or costs arising out of the failure to withhold taxes and the characterization of the settlement sum in paragraph 3. If payroll taxes are subsequently determined to be necessary, the City shall pay its share as the employer, but Plaintiff shall be responsible for his share and any and all penalties, interest and/or other costs associated therewith. Plaintiff acknowledges that the


City


Plaintiff

City has not provided any tax advice upon which Plaintiff has relied.

2.9 Plaintiff represents he is not aware of any liens and/or third-party claims of any type related in any way to the Action. Plaintiff shall be solely responsible for any such liens and/or claims that exist. Plaintiff agrees to defend, indemnify and hold harmless the City for any liability and costs, including any attorneys' fees, related to any such liens and/or claims that exist.

3. Settlement Sum.

Pursuant to the terms and conditions contained in this Agreement, including, without limitation the particular requirements set forth in Paragraph 6 herein, within 30 days of the City's counsel's receipt of (1) a copy of this Agreement fully executed by Plaintiff and his counsel and (2) fully executed W9s from Plaintiff and his counsel, and subject to the contingent City Council approval described in Paragraph 17, the City agrees to pay Plaintiff the sum of Sixty Thousand and 00/100 Dollars (\$60,000.00) (the "Settlement Sum"), paid jointly to "THOMAS NIEDERREUTHER and GAVRILOV & BROOKS" for all alleged damages, costs and attorneys' fees, upon which IRS Form 1099s shall issue to Plaintiff and his counsel. Plaintiff acknowledges he is currently not seeking any wage loss as damages, and none of the Settlement Sum shall be characterized as wages. Payment shall be made by mailing the checks to Plaintiff's counsel's office.

4. Denial of Liability.

Plaintiff acknowledges that Releasees have denied and continue to deny any and all liability for any claims relating to Plaintiff. Plaintiff expressly recognizes that the making of this Agreement does not in any way constitute an admission or concession of wrongdoing on the part of any Releasee.

5. Waiver of California Civil Code Section 1542.

5.1 Plaintiff agrees that by signing this Agreement and in return for the consideration described above, Plaintiff gives up any and all rights Plaintiff may have to obtain any monetary award against any Releasee, through any administrative agency, court or other forum. Plaintiff understands and expressly agrees that this Agreement extends to all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected, past or present, which Plaintiff has or may have against any Releasee, and all rights under Section 1542 of the California Civil Code are hereby expressly waived. Such Section reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by his or her must have materially affected his or her settlement with the debtor.

5.2 Plaintiff agrees that Plaintiff has read this Agreement, including the waiver of California Civil Code section 1542, and that Plaintiff has had the opportunity to


City


Plaintiff

consult counsel about the Agreement and specifically about the waiver of Section 1542, and Plaintiff understands the Agreement and the Section 1542 waiver, and freely and knowingly enters into this Agreement. Plaintiff acknowledges that Plaintiff may hereafter discover facts different from or in addition to those Plaintiff knows or now believes to be true with respect to the matters released or described in this Agreement, and Plaintiff agrees the releases and agreements contained herein shall be and will remain effective in all respects notwithstanding any later discovery of any such different or additional facts. Plaintiff hereby assumes any and all risk of any mistake in connection with the true facts involved in the matters, disputes or controversies described herein or with regard to any facts which are now unknown to Plaintiff relating thereto.

6. **Confidentiality and Non-Disparagement.**

6.1 Except as noted elsewhere in paragraph 6 of this Agreement, Plaintiff and Plaintiff's attorneys shall keep the existence, terms and conditions of this Agreement, completely and strictly confidential. Upon inquiry regarding the matter or any claim Plaintiff may have had against any Releasee, Plaintiff and/or Plaintiff's representatives shall state only that the matter has been resolved. **In the event of a breach of these confidentiality provisions, Plaintiff expressly agrees to pay \$5,000.00 as liquidated damages for each disclosure and expressly recognizes that the actual amount of damages flowing from said disclosure is not readily ascertainable and the sum of \$5,000.00 for each disclosure is a reasonable one. Plaintiff so agrees to be bound:**

DATED: 12-2-16, 2016



THOMAS NIEDERREUTHER


6.2 The only exceptions to paragraph 6.1 are as follows:

6.2.1 If the terms or conditions of this Agreement must be disclosed as required by law; or to any federal, state or local agency; or upon order of any court of competent jurisdiction in any action in which Plaintiff is a party; or if Plaintiff is subpoenaed as a witness; or


6.2.2 If the terms or conditions of this Agreement must be disclosed to remedy a breach of any term or condition herein; or

6.2.3 The Plaintiff may inform Plaintiff's legal counsel and his tax or financial advisors, on the further condition that Plaintiff advises such individuals in advance of disclosure that the terms and conditions of the Agreement are strictly confidential. Plaintiff agrees to be held liable for any and all unpermitted disclosures of this Agreement by individuals identified in this paragraph and that any such unpermitted disclosure of this Agreement shall subject the responsible party to liability pursuant to paragraph 6.1.

6.3 If disclosure is to be made pursuant to paragraph 6.2.1, Plaintiff or Plaintiff's representatives shall immediately, but in no event more than five (5) business days



City



Plaintiff

from receipt of a request or order for such disclosure, and at least thirty (30) days prior to any such disclosure, notify the City so, if it chooses, it can seek appropriate relief from a court or tribunal of competent jurisdiction, at the City's own expense, to prevent said disclosure.

6.4 Plaintiff agrees that as to any Releasee, he shall not engage in any defamatory conduct.

7. **Waiver of Future Contractual Relationship and/or Employment.**

Due to their irreconcilable differences, Plaintiff no longer wishes to pursue any relationship with the City, or with any of its affiliated organizations, successors and assigns. Therefore, Plaintiff agrees not to seek work with, or become in any way contracted or employed with, any such entity or organization. Plaintiff agrees that, if he knowingly or unknowingly applies for, is offered, accepts a position, or in any way becomes contracted with or employed with an entity described in this paragraph, the offer may be withdrawn or the relationship or contract may be severed immediately without notice or cause. Subject to paragraph 2.4 of this Agreement, Plaintiff waives any right to seek legal or administrative redress of any kind for events relating to the withdrawal of any offer, or termination, as described in this paragraph. The provisions in this paragraph may only be waived by explicit written consent of the Parties, specifically referencing this Paragraph.

8. **Agreement Not to Assist Others In Commencing or Prosecuting Any Claim Against Releasees.**

Plaintiff agrees and understands that, except as may be required by subpoena, court order, or other force of laws, and except as specified in paragraph 2.4, he shall not in any way knowingly assist any individual or entity in commencing or prosecuting any action or proceeding against any Releasee. Absent legal compulsion, and except as specified in paragraph 2.4, this Agreement bars Plaintiff from testifying, providing documents or information, advising, counseling or providing any other form of assistance to any person or entity who Plaintiff is aware, is considering making, or who is making, any claim against any Releasee.

9. **Severability.**

If any provision of this Agreement is declared illegal or unenforceable by any court of competent jurisdiction or arbitrator and cannot be modified to be enforceable, that provision will immediately become null and void, leaving the remainder of this Agreement in full force and effect. If Plaintiff takes any action to challenge any provision in this Agreement, or if any provision of this Agreement is deemed unenforceable in an arbitration or civil or administrative proceeding (regardless of whether Plaintiff instituted such proceeding), Plaintiff shall immediately return to the City the entire settlement sum in paragraph 3.

10. **Construction.**

The normal rule of construction that any ambiguity or uncertainty in writing shall be interpreted against the party drafting the writing shall not apply to any action on this



City



Plaintiff

Agreement. This Agreement shall be construed and interpreted in accordance with the law of the State of California.

11. Integration.

This Agreement represents the complete understanding between the parties. No other promises or agreements shall be binding or shall modify this Agreement unless signed by the parties hereto.

12. Execution.

This Agreement may be signed in counterparts and on separate signature pages. These separate signature pages will become part of the integrated Agreement. Facsimile or electronic executed copies of this Agreement shall be enforceable as if they were originals, and facsimile or email exchange of executed copies of this Agreement shall bind the parties.

13. Medicare.

13.1. General Statement for Consideration of any Medicare Interest. This settlement is based upon a good faith determination of the parties to resolve a disputed claim. The parties have not shifted responsibility of medical treatment to Medicare in contravention of 42 U.S.C. Sec. 1395y(b). The parties resolved this matter in compliance with both state and federal law.

13.2. Representations and Warranties By Plaintiff. Plaintiff and Plaintiff's counsel warrant that Plaintiff is not a Medicare beneficiary as of the date of this Agreement. Because Plaintiff is not a Medicare recipient as of the date of this Agreement, no conditional payments have been made to Medicare.

13.3. Hold Harmless. Plaintiff will indemnify, defend and hold Releasees harmless from any and all claims, liens, Medicare conditional payments and rights to payment, known or unknown. If any governmental entity, or anyone acting on behalf of any governmental entity, seeks damages including multiple damages from Releasees relating to payment by such governmental entity, or anyone acting on behalf of such governmental entity, relating to Plaintiff's alleged injuries, claims or lawsuit, Plaintiff will defend and indemnify Releasees, and hold Releasees harmless from any and all such damages, claims, liens, Medicare conditional payments and rights to payment, including any attorneys' fees sought by such entities. Plaintiff shall reasonably cooperate with any Releasee upon request with respect to any information needed to satisfy any reporting requirements under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, if applicable, and any claim for which Plaintiff is required to indemnify any Releasee under this paragraph. Plaintiff waives any and all future actions against any Releasee for any private cause of action for damages pursuant to 42 U.S.C. § 1395y(b)(3)(A).

13.4. Concluding Statement of Intent of the Parties. While it is impossible to accurately predict the need for medical treatment, this settlement is based upon a good faith


City


Plaintiff

determination of the parties in order to resolve a disputed claim. The parties have attempted to resolve this matter in compliance with both state and federal law, and it is believed that the settlement terms adequately consider and protect any Medicare interest and do not reflect any attempt to shift responsibility of treatment to Medicare pursuant to 42 U.S.C. Sec. 1395y(b). The parties acknowledge and understand that any present or future action or decision by CMS or Medicare on this settlement, or Plaintiff's eligibility or entitlement to Medicare or Medicare payments, will not render this release void or ineffective, or in any way affect the finality of this settlement.

14. Dismissal.

Within five (5) days of Plaintiff's counsel's receipt of the settlement proceeds described in paragraph 3, Plaintiff shall take any and all steps to have the Action dismissed with prejudice, with each party to bear their own costs and fees.

15. Mutual Representations, Covenants and Warranties.

Each of the parties to this Agreement represents, warrants, and agrees as follows:

15.1 Each party has had the opportunity to receive independent legal advice from his or its attorney with respect to the advisability of reaching a settlement in this action, the advisability of executing its agreement, and the ramifications of the meaning of California Civil Code section 1542.

15.2 No party has made any statement or representation to any other party regarding any fact relied upon in entering into this Agreement, and no party has relied upon any statement, representation or promise of any other party (or of any officer, agent, employee, representative or attorney for the other party) in executing this Agreement or in making the settlement provided for herein, except as expressly stated in this Agreement.

15.3 Each party has entered into this Agreement freely and voluntarily and has made an investigation of the facts pertaining to the settlement, this Agreement and all of the matters relating thereto.

15.4 Each party or responsible officer or agent thereof has read this Agreement and understands the contents hereof. Each of the persons executing this Agreement on behalf of the respective parties is empowered to do so and thereby binds this respective party.

16. ADEA Waiver.

Without limiting its scope in any way, Plaintiff certifies that this Agreement includes a knowing and voluntary waiver of any and all rights or claims that exist or that he has or may claim to have under the Age Discrimination in Employment Act ("ADEA"), as amended by the Older Workers' Benefit Protection Act of 1990 (29 U.S.C. §§ 621, et seq.). This ADEA release does not govern any rights or claims that might arise under the ADEA after the date this Agreement is signed by Plaintiff. Plaintiff acknowledges that:


City


Plaintiff

16.1 The consideration provided pursuant to this Agreement is in addition to any consideration that he would otherwise be entitled to receive;

16.2 Plaintiff has been and is hereby advised in writing to consult with an attorney prior to signing this Agreement;

16.3 Plaintiff has been provided a full and reasonable opportunity to study and consider this Agreement with his counsel before signing it, including a period of at least 21 days to consider it;

16.4 Plaintiff agrees that any modifications, material or otherwise made to this Agreement do not restart or affect in any way the original 21-calendar day consideration period;

16.5 To the extent that he takes less than 21 days to consider this Agreement prior to execution, Plaintiff acknowledges that he had sufficient time to consider this Agreement with his counsel; that he expressly, voluntarily and knowingly waives any additional time; and that his decision to accept in less than 21 days was not induced by fraud, misrepresentation and/or a threat to withdraw or alter the offer prior to the expiration of the 21-day period; and

16.6 Plaintiff is aware of his right to revoke this Agreement, within the 7-day period following the date he signs it and that the Agreement will not be effective or enforceable until the 7-day revocation period expires. Plaintiff further understands that he relinquishes any right to the consideration specified herein if he exercises the right to revoke the Agreement. Notice of revocation must be made by Plaintiff and be received by the Defendant's counsel no later than the 7th day after Plaintiff executes this Agreement. If the 7th day is a Saturday, Sunday, or legal holiday in California, he has until the next day which is not a Saturday, Sunday, or legal holiday.

17. Council Approval.

This Agreement is contingent upon the City obtaining City Council approval of the Agreement. The City shall seek such approval on or before its next regularly scheduled meeting.

DATED: December 1, 2016

PLAINTIFF:
THOMAS NIEDERREUTHER



DATED: December 1, 2016

CITY OF ATWATER

By: 

FRANK PIETNO
(print name)

Its: CITY MANAGER


City


Plaintiff

AGREED TO AS TO FORM:



J. Edward Brooks
Attorneys for PLAINTIFF
THOMAS NIEDERREUTHER



Michael J. Christian
Attorneys for DEFENDANT
CITY OF ATWATER



City
Plaintiff

EXHIBIT 4

January 22, 2018

Art de Werk
Atwater Interim City Manager
750 Bellevue Road
Atwater, CA 95301

Re: Letter In Support of Tom Niederreuther Reinstatement

Dear Mr. de Werk:

My name is Dick Wisdom. I am a retired Atwater Police Administrative Sergeant. At the time of my retirement, in October of 2017, I was second in command of APD. I also served as Acting Chief for three months during 2017 while Chief Joseph was out of state attending the FBI Academy. I am writing to you to strongly recommend the reinstatement of Tom Niederreuther to his police officer position. I know Tom well and have worked with him as his supervisor both during the last 10 weeks of his full time police officer employment and during much of his tenure as a full time contract reserve police officer.

I can state in no uncertain terms that Tom was the victim of discrimination and that his job performance was equal to, and in some cases better than his peers (none of whom were terminated). On several occasions, I have also spoken with three other patrol sergeants that worked with Tom, Sergeant Echevarria, Sergeant Snyder, and Sergeant Smothers and they all shared the same opinion as I did about Tom and his performance and that he should not have been terminated. In fact, none of us were aware of, nor consulted prior to Tom's termination.

Tom's termination was orchestrated by Sergeant Novetzke, the single patrol sergeant, one out of five that did not support Tom. In early 2015, Novetzke opposed Tom's promotion from full time contract reserve to full time regular officer. I and other sergeants spoke with then Chief Pietro, recommending Tom for the full time regular position. Chief Pietro overruled Sergeant Novetzke and promoted Tom.

Apparently angry that he had been overruled, Sergeant Novetzke started harassing Tom with trivial and/or baseless write ups. One such complaint brought to me by Sergeant Novetzke was that Tom was not carrying the same workload as his peers. I reviewed the statistics, and found that Tom was in fact doing more work and making more arrests than most of his shift partners. After I overruled Sergeant Novetzke's complaints, I informed then Lieutenant Joseph of my findings. Lieutenant Joseph told me he agreed with my findings exonerating Tom, but for reasons unbeknownst to me, Lieutenant Joseph put Tom on a PIP program. On my recommendation, Lt. Joseph assigned Sergeant Snyder as the evaluating supervisor. Sgt. Snyder rode out with Tom for approximately a month. After that, Sergeant Snyder concluded that Tom was performing in a totally satisfactory manner. I thought that conclusion would end Novetzke's harassment of Tom, but it didn't.

As previously stated, I and the other three sergeants had no issues with Tom's performance, Sergeant Novetzke however, would not let go of his apparent vendetta. He would meet, almost on an everyday basis, with the Lieutenant in his office with the door closed. While, I was not privy to the content of those conversations, I am quite certain that they included "bad mouthing" Tom. Sergeant Novetzke also had similar and frequent closed door meetings with Chief Pietro. Since Sergeant Novetzke was the only supervisor who was against Tom, it stands to reason that he convinced the Lieutenant and Chief to terminate Tom.

Tom filed a discrimination lawsuit against the City. This prompted the City Attorney to hire an investigator to interview various APD officers. Two tenured officers confided in me that they were also harassed by Sergeant Novetzke and that they told the investigator about this. I also informed the investigator of the fact that the only supervisor that had a problem with Tom was Sergeant Novetzke and that I was of the opinion that Sergeant Novetzke's complaint was unfounded. I believe that Sergeant Novetzke's discrimination and harassment of Tom, as substantiated by that investigation, clearly resulted in the City having to pay out a \$60,000 settlement in Tom's case.

It should be noted that I previously considered Sergeant Novetzke a friend and originally supported his promotion to Corporal in 2013, however in 2016 after the two tenured officers confided in me how they too had been harassed by Sergeant Novetzke, coupled with what he did to Tom, I came to the realization that once Sergeant Novetzke had power over people, he abused that power by bullying officers whom he didn't like or otherwise were not part of his "clique". In retrospect, I feel that his promotion was a big mistake.

I believe that Sergeant Novetzke is also untrustworthy and will undermine others behind their back to get ahead. After I completed my three months as Acting Chief while Chief Joseph was at the FBI Academy, a very reliable and trustworthy source informed me that Sergeant Novetzke had stated in their presence that I was "an idiot" and that Sergeant Novetzke was the one who was really running the Department behind the scenes while Chief Joseph was gone. An absurd assertion.

When Sergeant Novetzke heard I was retiring, he was angling to get my position as the Administrative Sergeant. This would have put him in the number two position in the Department working as the Chief's "right hand man" on an everyday basis. I believed that if Sergeant Novetzke obtained the Administrative Sergeant position the consequences would be terrible for Department and the officers. I expressed my opinion to Chief Joseph that making Sergeant Novetzke Administrative Sergeant would be a grave mistake. Joseph listened to my recommendation and appointed Sergeant Snyder Administrative Sergeant, instead of Sergeant Novetzke. Many officers took the time to personally thank me for stopping Sergeant Novetzke from getting the Administrative Sergeant position.

Reiterating, I strongly believe that Tom was discriminated against and wrongfully fired and that he should be reinstated. Should you have any questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dick Wisdom". The signature is fluid and cursive, with a large initial "D" and "W".

Sergeant, Dick Wisdom (Ret.)

EXHIBIT 5

Phone: (209) 614-9375
Niederreuther2000@hotmail.com

February 8, 2018

Armando Echevarria
Atwater Interim Police Chief
750 Bellevue Road
Atwater, CA 95301

Re: Reinstatement Request—Confidential Personnel Matter

Dear Chief Echevarria:

I was terminated from my employment as a full time police officer with the City on February 4, 2016 by then City Manager/ Police Chief Pietro. I am writing to request a review of my termination and a review of my five year employment history with APD. I am further requesting reinstatement to my position as a full time Atwater Police Officer.

I am making this request at this time due to the recent changes in management that the City has undergone. I trust that the change in management will enable a fresh look at how I was treated and be conducive to my reinstatement.

As you may be aware, subsequent to my termination, I retained counsel and filed a federal lawsuit against the City and William Novetzke for reinstatement and money damages. Negotiations with Frank Pietro for a reinstatement appeared promising in the Fall of 2016, but then suddenly broke down with Pietro contending that the new Interim Chief, Samuel Joseph, did not want me back. With Pietro withdrawing the reinstatement option, I reluctantly accepted a \$ 60,000 cash settlement from the City in exchange for a release of all claims including reinstatement.

In light of the change in management, I now propose to return the \$60,000 to the City in exchange for reinstatement to my former position. This would benefit the City financially during these difficult financial times and would also provide the opportunity to right the wrongs perpetrated against me by Novetzke and Joseph.

Enclosed with this letter is a copy of the Confidential Settlement Agreement and General Release. I am proposing that the City and I enter into a written amendment of the Agreement modifying paragraph 3 (for return by me of the \$60, 000 to the City) and modifying paragraph 7 (to facilitate my reinstatement). In all other respects the Agreement would remain in effect as written.

As indicated below, although Pietro terminated me, he did so at the urging of Sergeant Novetzke and then Lieutenant Joseph. Novetzke was the only patrol supervisor who was against me. The support I had from the four other patrol supervisors was completely ignored – in fact they were never even consulted prior to my termination.

I have attached a letter dated January 22, 2018 from retired APD Administrative Sergeant Dick Wisdom. This letter totally exposes Novetzke's discriminatory treatment of me and how Novetzke unjustly orchestrated my termination. As you are aware, once Joseph assumed the Chief position, Sergeant Wisdom rose to the number two man in the Department and was also entrusted with the Acting Chief position for three months while Joseph was attending the FBI Academy. As such, Sergeant Wisdom's observations and opinions are highly probative of what actually happened in my case.

Please also see the enclosed post termination reference letters. These include letters from: APD Officer Lorin Mann; APD Detective Matt Vierra; APD Sergeant Armando Echevarria; Senior DDA, Merced County, Matt Serratto; Ret. Ceres Chief Art de Werk; Ret. Stanislaus Sheriff Les Weidman; Tuolumne County Superior Court Judge, Kevin Seibert. A copy of my resume is also enclosed for your reference.

I have also enclosed for your reference a copy of my Federal Complaint, although much of this 28 page Complaint consists of legalese, pages four through twelve provide an accurate plain English summary of my five year

history of employment by APD and expose the Age/Discrimination/Harassment I was subjected to by Novetzke and Joseph. As you are aware, by any and all

standards, I have always been in excellent physical condition and thus my age should not have been an issue. I will summarize some of the salient facts as stated in the Complaint. All numerical references are to the numbered paragraphs of the Complaint:

16. I was sworn in as a Reserve Officer on January 28, 2011.
19. In 2011 Novetzke expressed his opinion that he could "not believe I wanted to do this job at my age". He then wrote a scathing criticism of my job performance after riding out with me on the false pretext of "informally giving me some pointers".
21. On February 24, 2012 I was cleared as a solo operating Level One Reserve.
24. Novetzke was promoted to Corporal in approximately June of 2013.
25. Shortly after his promotion, Novetzke began to micromanage and harass me. He would make age related comments and ask age related questions such as: "How old are you?" "Who is older you or Duncan?" "Why do you even want this job at your age?" Even though he knew how old I was, Novetzke would routinely pretend to guess my age at a higher age than I actually was and tell me "I can't believe you want to work this job full time at your age".
27. In approximately July of 2013, I was promoted to Contract Reserve Officer and worked full time plus hours from that point on.
- 28 & 29. I had other supervisors until the summer of 2014, when Novetzke once again became my supervisor and resumed his micromanagement, and age related comments.
32. In late 2014 and early 2015 Novetzke had tried to stop Chief Pietro from hiring me for a regular position.
36. Other sergeants stepped in and told Chief Pietro I should be hired over Novetzke's objections.

37. On March 19, 2015 I was sworn in as a full time police officer.

43 - 50. As soon as I received the full time promotion, Novetzke stepped up his harassment of me and continued his age related commentary. Novetzke enlisted his good friend and roommate, Officer Robinson to write a letter to then Lieutenant Joseph critical of my arrest of a highly intoxicated felony, serial DUI suspect, claiming that I was tying myself up and causing Robinson more work. My statistics established I was doing twice as much work as Robinson.

51 - 56. In response to the Robinson letter, Lieutenant Joseph called me into his office and said "You are 54 (I was in fact 53 at the time). You can't relate to the younger cops. They are the age of your kids or grandkids. I don't know why you would want this job anyway. Most cops your age are already captains or chiefs." Joseph also related a story about an "older" reserve officer he knew when he worked in Los Angeles. This older reserve knew his place as a "helper" and never tried to become full time. Joseph told me that this story was analogous to my situation. The next day Joseph sent an email placing me on a PIP program with Sergeant Snyder.

57. Sergeant Snyder cleared me from The PIP and I received a memo in June of 2015 from Joseph that all issues were resolved.

63-64. On February 4, 2016 I was called into Chief Pietro's office and summarily terminated "without cause". This was just six weeks short of completion of my one year probation period.

After my lawsuit was filed and served the City Attorney hired an investigator to interview APD personnel. I am informed that Novetzke admitted that he made most, if not all, of the age related comments, but tried to dismiss them as "harmless". Also, as stated in the Wisdom letter, at least two tenured officers also said they were harassed and micromanaged by Novetzke.

Novetzke clearly orchestrated my termination with his campaign of closed door "bad mouthing" of me to then Lieutenant Joseph and Chief Pietro. Joseph

expressly revealed his own age animus toward me in the above described meeting that resulted in the PIP.

Conclusion

The new city management is in a unique position to uncover and right many mistakes and wrongs committed by prior management. I hope that you will carefully review my reinstatement request and come to the conclusion that I should be reinstated to my police officer status, with my prior seniority restored and with only six weeks remaining to complete my probation.

Thank you for your attention to this matter.

Sincerely,




Tom Niederreuther

Enclosures

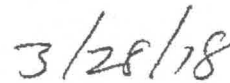
EXHIBIT 6

AMENDMENT TO CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE

1. Whereas Thomas Niederreuther (Niederreuther) entered into a Confidential Settlement Agreement and General Release with the City Of Atwater(City) executed on December 1, 2016 settling an employment case in Federal District Court , Fresno Division (1:16-CV-00827-DAD-EPG). A true and correct copy of said Agreement is attached.
2. Whereas paragraph seven of said Agreement prohibits Niederreuther from seeking re-employment by the City unless explicitly waived by the parties.
3. Whereas the parties now desire to waive paragraph 7 and allow Niederreuther to apply for full time and/or reserve police officer positions.
4. It is hereby agreed that Niederreuther may apply for any and all employment opportunities with the City without being hindered by paragraph 7 of said Agreement.
5. All other terms and conditions of the Agreement shall remain the same.
6. This Amendment shall be construed as if jointly drafted by the parties.



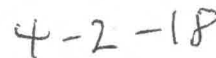
Art de Werk, Interim City Manager



Date



Thomas Niederreuther



Date

CONFIDENTIAL SETTLEMENT AGREEMENT
AND GENERAL RELEASE

This Confidential Settlement Agreement and General Release ("Agreement") is made and entered into between THOMAS NIEDERREUTHER ("Plaintiff") and the CITY OF ATWATER (the "City"). This Agreement is made pursuant to the following terms and conditions.

1. Pending and Future Legal or Administrative Actions.

Plaintiff represents there are no actions, whether in court, before any agency or otherwise, asserting claims by or on behalf of Plaintiff against the City, its affiliated organizations, present or former agents, attorneys, councilmembers, employees, insurance carriers, successors and assigns, including but not limited to William Novetzke, (collectively "Releasees") other than Plaintiff's lawsuit pending in the United States District Court for the Eastern District of California - Fresno Division, entitled "*Thomas Niederreuther v. City of Atwater and William Novetzke, et al.*," Case No. 1:16-CV-00827-DAD-EPG (the "Action").

2. General Release of Claims and Affirmations.

2.1 It is understood and agreed by and between the parties to this Agreement that in consideration for the City's agreement as set forth in paragraph 3 of the Agreement, and the other promises contained herein, Plaintiff completely releases and forever discharges Releasees from all causes of action, claims, judgments, obligations, damages, and liabilities of whatever kind and character, including, but not limited to, those claims that are asserted or that could have been asserted in the Action, and those arising under the Employee Retirement Income Security Act of 1974; the Americans with Disabilities Act; Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Civil Rights Act of 1866 (42 U.S.C. § 1981); the Civil Rights Act of 1871 (42 U.S.C. §§ 1985 and 1986); the Equal Pay Act of 1963; the Consolidated Omnibus Budget Reconciliation Act of 1985; the California Fair Employment and Housing Act, Gov. Code §§ 12940 *et seq.*; applicable California Wage Order provisions; the California Business and Professions Code §§ 17200 *et seq.*; the California Civil Code; the California Labor Code; and any other federal, state, or local insurance, human rights, civil rights, wage-hour, pension, or labor laws, rules and/or regulations, public policy, contract or tort laws, and any claim of retaliation under such laws, and any claim arising under common law including, but not limited to, causes of action for wrongful termination; constructive discharge; discrimination or harassment on the basis of age, sex, sexual orientation, religion, marital status, taking a leave of absence, race, disability or national origin or retaliation for opposing such discriminatory practice; intentional infliction of emotional distress; negligent infliction of emotional distress; fraudulent misrepresentation; negligent misrepresentation; fraud; invasion of privacy; false imprisonment; conspiracy to commit any act mentioned herein; breach of contract (whether oral or written, express or implied); breach of the implied covenant of good faith and fair dealing; interference with business advantage; defamation; interference with prospective economic advantage; interference with contractual relationship; violation of any national, state or local statute, law, or ordinance; wrongful termination in violation of public policy; and any other action, whether cognizable in law or in equity based upon any conduct up to and including the



City



Plaintiff

date of this Agreement, and Plaintiff agrees that he will not, from any source or proceeding, seek or accept any award or settlement therefrom. In the event Plaintiff institutes or is a party to any action or proceeding asserting a claim released in this Agreement, such action or proceeding shall be dismissed with prejudice, with an award of attorneys' fees and costs to the subject Releasee(s) incurred as a result of such action or proceeding, immediately upon presentation of this Agreement.

2.2 Plaintiff represents and warrants that Plaintiff has not assigned or subrogated any claim concerning Releasees or authorized any other person or entity to assert such a claim or claims on Plaintiff's behalf. Plaintiff will take all actions necessary to obtain dismissal of any claim asserted by any other individual or entity against any Releasee on Plaintiff's behalf and will not accept relief or recovery from any action that is not dismissed.

2.3 Plaintiff further agrees to waive any claim for damages occurring at any time after the date of this Agreement because of alleged continuing effects of any alleged discriminatory or other wrongful acts or omissions involving any Releasee, which occurred on or before the date of this Agreement. Plaintiff further agrees to waive any right Plaintiff may have to sue for injunctive relief against the alleged continuing effects of any alleged discriminatory or other wrongful acts or omissions occurring prior to and including the date of this Agreement.

2.4 Nothing in this Agreement prohibits or prevents Plaintiff from filing a charge or participating, testifying or assisting in any investigation, hearing or other proceeding before any federal, state, or local government agency. However, to the maximum extent permitted by law, Plaintiff agrees that if such an administrative claim is made, Plaintiff shall not be entitled to recover any individual monetary relief or other individual remedies.


2.5 To the extent permitted by law, Plaintiff waives any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on such a claim in which any Releasee is a party. Plaintiff shall take any necessary steps to dismiss himself from any class claims, including but not limited to opting-out of such claims.

2.6 Plaintiff affirms that Plaintiff has not divulged any confidential information of any Releasee and will continue to maintain the confidentiality of such information consistent with the City's policies and agreements(s) and/or common law.

2.7 Other than the settlement sum in paragraph 3, Plaintiff agrees and represents that no other form of monetary compensation is owed to him by any Releasee as of the date he executes this Agreement and that all employment-related compensation has been paid by any Releasee.

2.8 Plaintiff agrees to defend, indemnify and hold harmless the City for any liability or costs arising out of the failure to withhold taxes and the characterization of the settlement sum in paragraph 3. If payroll taxes are subsequently determined to be necessary, the City shall pay its share as the employer, but Plaintiff shall be responsible for his share and any and all penalties, interest and/or other costs associated therewith. Plaintiff acknowledges that the


City


Plaintiff

City has not provided any tax advice upon which Plaintiff has relied.

2.9 Plaintiff represents he is not aware of any liens and/or third-party claims of any type related in any way to the Action. Plaintiff shall be solely responsible for any such liens and/or claims that exist. Plaintiff agrees to defend, indemnify and hold harmless the City for any liability and costs, including any attorneys' fees, related to any such liens and/or claims that exist.

3. Settlement Sum.

Pursuant to the terms and conditions contained in this Agreement, including, without limitation the particular requirements set forth in Paragraph 6 herein, within 30 days of the City's counsel's receipt of (1) a copy of this Agreement fully executed by Plaintiff and his counsel and (2) fully executed W9s from Plaintiff and his counsel, and subject to the contingent City Council approval described in Paragraph 17, the City agrees to pay Plaintiff the sum of Sixty Thousand and 00/100 Dollars (\$60,000.00) (the "Settlement Sum"), paid jointly to "THOMAS NIEDERREUTHER and GAVRILOV & BROOKS" for all alleged damages, costs and attorneys' fees, upon which IRS Form 1099s shall issue to Plaintiff and his counsel. Plaintiff acknowledges he is currently not seeking any wage loss as damages, and none of the Settlement Sum shall be characterized as wages. Payment shall be made by mailing the checks to Plaintiff's counsel's office.

4. Denial of Liability.

Plaintiff acknowledges that Releasees have denied and continue to deny any and all liability for any claims relating to Plaintiff. Plaintiff expressly recognizes that the making of this Agreement does not in any way constitute an admission or concession of wrongdoing on the part of any Releasee.

5. Waiver of California Civil Code Section 1542.

5.1 Plaintiff agrees that by signing this Agreement and in return for the consideration described above, Plaintiff gives up any and all rights Plaintiff may have to obtain any monetary award against any Releasee, through any administrative agency, court or other forum. Plaintiff understands and expressly agrees that this Agreement extends to all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected, past or present, which Plaintiff has or may have against any Releasee, and all rights under Section 1542 of the California Civil Code are hereby expressly waived. Such Section reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by his or her must have materially affected his or her settlement with the debtor.

5.2 Plaintiff agrees that Plaintiff has read this Agreement, including the waiver of California Civil Code section 1542, and that Plaintiff has had the opportunity to


City


Plaintiff

consult counsel about the Agreement and specifically about the waiver of Section 1542, and Plaintiff understands the Agreement and the Section 1542 waiver, and freely and knowingly enters into this Agreement. Plaintiff acknowledges that Plaintiff may hereafter discover facts different from or in addition to those Plaintiff knows or now believes to be true with respect to the matters released or described in this Agreement, and Plaintiff agrees the releases and agreements contained herein shall be and will remain effective in all respects notwithstanding any later discovery of any such different or additional facts. Plaintiff hereby assumes any and all risk of any mistake in connection with the true facts involved in the matters, disputes or controversies described herein or with regard to any facts which are now unknown to Plaintiff relating thereto.

6. **Confidentiality and Non-Disparagement.**

6.1 Except as noted elsewhere in paragraph 6 of this Agreement, Plaintiff and Plaintiff's attorneys shall keep the existence, terms and conditions of this Agreement, completely and strictly confidential. Upon inquiry regarding the matter or any claim Plaintiff may have had against any Releasee, Plaintiff and/or Plaintiff's representatives shall state only that the matter has been resolved. **In the event of a breach of these confidentiality provisions, Plaintiff expressly agrees to pay \$5,000.00 as liquidated damages for each disclosure and expressly recognizes that the actual amount of damages flowing from said disclosure is not readily ascertainable and the sum of \$5,000.00 for each disclosure is a reasonable one. Plaintiff so agrees to be bound:**

DATED: 11-2-16, 2016


THOMAS NIEDERREUTHER


6.2 The only exceptions to paragraph 6.1 are as follows:

6.2.1 If the terms or conditions of this Agreement must be disclosed as required by law; or to any federal, state or local agency; or upon order of any court of competent jurisdiction in any action in which Plaintiff is a party; or if Plaintiff is subpoenaed as a witness; or

6.2.2 If the terms or conditions of this Agreement must be disclosed to remedy a breach of any term or condition herein; or

6.2.3 The Plaintiff may inform Plaintiff's legal counsel and his tax or financial advisors, on the further condition that Plaintiff advises such individuals in advance of disclosure that the terms and conditions of the Agreement are strictly confidential. Plaintiff agrees to be held liable for any and all unpermitted disclosures of this Agreement by individuals identified in this paragraph and that any such unpermitted disclosure of this Agreement shall subject the responsible party to liability pursuant to paragraph 6.1.

6.3 If disclosure is to be made pursuant to paragraph 6.2.1, Plaintiff or Plaintiff's representatives shall immediately, but in no event more than five (5) business days


City


Plaintiff

from receipt of a request or order for such disclosure, and at least thirty (30) days prior to any such disclosure, notify the City so, if it chooses, it can seek appropriate relief from a court or tribunal of competent jurisdiction, at the City's own expense, to prevent said disclosure.

6.4 Plaintiff agrees that as to any Releasee, he shall not engage in any defamatory conduct.

7. Waiver of Future Contractual Relationship and/or Employment.

Due to their irreconcilable differences, Plaintiff no longer wishes to pursue any relationship with the City, or with any of its affiliated organizations, successors and assigns. Therefore, Plaintiff agrees not to seek work with, or become in any way contracted or employed with, any such entity or organization. Plaintiff agrees that, if he knowingly or unknowingly applies for, is offered, accepts a position, or in any way becomes contracted with or employed with an entity described in this paragraph, the offer may be withdrawn or the relationship or contract may be severed immediately without notice or cause. Subject to paragraph 2.4 of this Agreement, Plaintiff waives any right to seek legal or administrative redress of any kind for events relating to the withdrawal of any offer, or termination, as described in this paragraph. The provisions in this paragraph may only be waived by explicit written consent of the Parties, specifically referencing this Paragraph.

8. Agreement Not to Assist Others In Commencing or Prosecuting Any Claim Against Releasees.

Plaintiff agrees and understands that, except as may be required by subpoena, court order, or other force of laws, and except as specified in paragraph 2.4, he shall not in any way knowingly assist any individual or entity in commencing or prosecuting any action or proceeding against any Releasee. Absent legal compulsion, and except as specified in paragraph 2.4, this Agreement bars Plaintiff from testifying, providing documents or information, advising, counseling or providing any other form of assistance to any person or entity who Plaintiff is aware, is considering making, or who is making, any claim against any Releasee.

9. Severability.

If any provision of this Agreement is declared illegal or unenforceable by any court of competent jurisdiction or arbitrator and cannot be modified to be enforceable, that provision will immediately become null and void, leaving the remainder of this Agreement in full force and effect. If Plaintiff takes any action to challenge any provision in this Agreement, or if any provision of this Agreement is deemed unenforceable in an arbitration or civil or administrative proceeding (regardless of whether Plaintiff instituted such proceeding), Plaintiff shall immediately return to the City the entire settlement sum in paragraph 3.

10. Construction.

The normal rule of construction that any ambiguity or uncertainty in writing shall be interpreted against the party drafting the writing shall not apply to any action on this

Agreement. This Agreement shall be construed and interpreted in accordance with the law of the State of California.

11. Integration.

This Agreement represents the complete understanding between the parties. No other promises or agreements shall be binding or shall modify this Agreement unless signed by the parties hereto.

12. Execution.

This Agreement may be signed in counterparts and on separate signature pages. These separate signature pages will become part of the integrated Agreement. Facsimile or electronic executed copies of this Agreement shall be enforceable as if they were originals, and facsimile or email exchange of executed copies of this Agreement shall bind the parties.

13. Medicare.

13.1. General Statement for Consideration of any Medicare Interest. This settlement is based upon a good faith determination of the parties to resolve a disputed claim. The parties have not shifted responsibility of medical treatment to Medicare in contravention of 42 U.S.C. Sec. 1395y(b). The parties resolved this matter in compliance with both state and federal law.

13.2. Representations and Warranties By Plaintiff. Plaintiff and Plaintiff's counsel warrant that Plaintiff is not a Medicare beneficiary as of the date of this Agreement. Because Plaintiff is not a Medicare recipient as of the date of this Agreement, no conditional payments have been made to Medicare.

13.3. Hold Harmless. Plaintiff will indemnify, defend and hold Releasees harmless from any and all claims, liens, Medicare conditional payments and rights to payment, known or unknown. If any governmental entity, or anyone acting on behalf of any governmental entity, seeks damages including multiple damages from Releasees relating to payment by such governmental entity, or anyone acting on behalf of such governmental entity, relating to Plaintiff's alleged injuries, claims or lawsuit, Plaintiff will defend and indemnify Releasees, and hold Releasees harmless from any and all such damages, claims, liens, Medicare conditional payments and rights to payment, including any attorneys' fees sought by such entities. Plaintiff shall reasonably cooperate with any Releasee upon request with respect to any information needed to satisfy any reporting requirements under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, if applicable, and any claim for which Plaintiff is required to indemnify any Releasee under this paragraph. Plaintiff waives any and all future actions against any Releasee for any private cause of action for damages pursuant to 42 U.S.C. § 1395y(b)(3)(A).

13.4. Concluding Statement of Intent of the Parties. While it is impossible to accurately predict the need for medical treatment, this settlement is based upon a good faith


City


Plaintiff

determination of the parties in order to resolve a disputed claim. The parties have attempted to resolve this matter in compliance with both state and federal law, and it is believed that the settlement terms adequately consider and protect any Medicare interest and do not reflect any attempt to shift responsibility of treatment to Medicare pursuant to 42 U.S.C. Sec. 1395y(b). The parties acknowledge and understand that any present or future action or decision by CMS or Medicare on this settlement, or Plaintiff's eligibility or entitlement to Medicare or Medicare payments, will not render this release void or ineffective, or in any way affect the finality of this settlement.

14. Dismissal.

Within five (5) days of Plaintiff's counsel's receipt of the settlement proceeds described in paragraph 3, Plaintiff shall take any and all steps to have the Action dismissed with prejudice, with each party to bear their own costs and fees.

15. Mutual Representations, Covenants and Warranties.

Each of the parties to this Agreement represents, warrants, and agrees as follows:

15.1 Each party has had the opportunity to receive independent legal advice from his or its attorney with respect to the advisability of reaching a settlement in this action, the advisability of executing its agreement, and the ramifications of the meaning of California Civil Code section 1542.

15.2 No party has made any statement or representation to any other party regarding any fact relied upon in entering into this Agreement, and no party has relied upon any statement, representation or promise of any other party (or of any officer, agent, employee, representative or attorney for the other party) in executing this Agreement or in making the settlement provided for herein, except as expressly stated in this Agreement.

15.3 Each party has entered into this Agreement freely and voluntarily and has made an investigation of the facts pertaining to the settlement, this Agreement and all of the matters relating thereto.

15.4 Each party or responsible officer or agent thereof has read this Agreement and understands the contents hereof. Each of the persons executing this Agreement on behalf of the respective parties is empowered to do so and thereby binds this respective party.

16. ADEA Waiver.

Without limiting its scope in any way, Plaintiff certifies that this Agreement includes a knowing and voluntary waiver of any and all rights or claims that exist or that he has or may claim to have under the Age Discrimination in Employment Act ("ADEA"), as amended by the Older Workers' Benefit Protection Act of 1990 (29 U.S.C. §§ 621, et seq.). This ADEA release does not govern any rights or claims that might arise under the ADEA after the date this Agreement is signed by Plaintiff. Plaintiff acknowledges that:


City


Plaintiff

16.1 The consideration provided pursuant to this Agreement is in addition to any consideration that he would otherwise be entitled to receive;

16.2 Plaintiff has been and is hereby advised in writing to consult with an attorney prior to signing this Agreement;

16.3 Plaintiff has been provided a full and reasonable opportunity to study and consider this Agreement with his counsel before signing it, including a period of at least 21 days to consider it;

16.4 Plaintiff agrees that any modifications, material or otherwise made to this Agreement do not restart or affect in any way the original 21-calendar day consideration period;

16.5 To the extent that he takes less than 21 days to consider this Agreement prior to execution, Plaintiff acknowledges that he had sufficient time to consider this Agreement with his counsel; that he expressly, voluntarily and knowingly waives any additional time; and that his decision to accept in less than 21 days was not induced by fraud, misrepresentation and/or a threat to withdraw or alter the offer prior to the expiration of the 21-day period; and

16.6 Plaintiff is aware of his right to revoke this Agreement, within the 7-day period following the date he signs it and that the Agreement will not be effective or enforceable until the 7-day revocation period expires. Plaintiff further understands that he relinquishes any right to the consideration specified herein if he exercises the right to revoke the Agreement. Notice of revocation must be made by Plaintiff and be received by the Defendant's counsel no later than the 7th day after Plaintiff executes this Agreement. If the 7th day is a Saturday, Sunday, or legal holiday in California, he has until the next day which is not a Saturday, Sunday, or legal holiday.

17. Council Approval.

This Agreement is contingent upon the City obtaining City Council approval of the Agreement. The City shall seek such approval on or before its next regularly scheduled meeting.

DATED: December 1, 2016

PLAINTIFF:
THOMAS NIEDERREUTHER



DATED: December 1, 2016

CITY OF ATWATER

By: 

FRANK PIETNO
(print name)

Its: CITY MANAGER


City
Plaintiff

AGREED TO AS TO FORM:



J. Edward Brooks
Attorneys for PLAINTIFF
THOMAS NIEDERREUTHER



Michael J. Christian
Attorneys for DEFENDANT
CITY OF ATWATER


City
Plaintiff

EXHIBIT 7

Thomas E. Niederreuther
2837 Scenic Bend
Modesto, CA 95355
Phone: (209) 614-9375
Niederreuther2000@hotmail.com

June 13, 2018

VIA HAND DELIVERY

Jeanna Del Real
H.R. Director
City of Atwater
750 Bellevue Road
Atwater, CA 95301

Re: Application

Dear Ms. Del Real:

Please find enclosed my application for the position of Reserve Police Officer and/or Police Officer. Also enclosed is a copy of an "Amendment To Confidential Settlement Agreement and General Release" signed by then Interim City Manager Art de Werk authorizing me to apply.

Please file my application and place me on the eligibility list.

Thank you for your attention to this matter.

Sincerely,



Tom Niederreuther

Enclosure

cc: Interim City Manager Waterman, w/encls.
Interim Police Chief Echevarria, w/encls.

June 13, 2018

VIA HAND DELIVERY

Ms. Lori Waterman
Interim City Manager
City of Atwater
750 Bellevue Road
Atwater, CA 95301

Re: Application

Dear Ms. Waterman:

Please find enclosed: a copy of my letter of today's date to Ms. Del Real; a copy of my application for the position of Reserve Police Officer and/or Police Officer; a copy of an "Amendment To Confidential Settlement Agreement and General Release" signed by then Interim City Manager Art de Werk to facilitate my return, and a copy of a letter dated 1-22-18 by retired Administrative Sergeant Dick Wisdom.

My return to APD is also supported by Interim Chief Echevarria, current Administrative Sergeant Snyder, retired Administrative Sergeant Wisdom and many others. As indicated by the application, I am willing to start again as a reserve officer, as I understand all full time officer positions are currently frozen.

If and when I am reinstated to a full time regular officer position, I would be willing to refund the \$ 60,000 settlement I received from the City. I am sure the City could use the funds. We could discuss those details further if and when full time officer position(s) become available again.

Also, as the enclosed letter from Dick Wisdom saliently points out, there was no legitimate basis for my termination in the first place. My termination was just another example of the poor and corrupt decision making by the Pietro/Joseph regime, which has caused the City innumerable problems and brought it to the brink of financial collapse.

I would be happy to meet with you in person and submit additional documentation, should you deem such necessary or desirable.

Thank you for your attention to this matter.

Sincerely,



Tom Niederreuther

Enclosures

cc: Interim Police Chief Echevarria, w/encls

EMPLOYMENT APPLICATION
CITY OF ATWATERHuman Resources Office
(209) 357-6204
750 Bellevue Road
Atwater, CA 95301
www.atwater.orgFOR OFFICE USE
Eligible _____

Position Title: Reserve Police Officer and/or Full Time Police Officer

(USE EXACT TITLE AS IT APPEARS ON JOB BULLETIN. JOB BULLETIN AVAILABLE FROM THE HUMAN RESOURCES OFFICE.)

INSTRUCTIONS: PLEASE READ CAREFULLY

This written Job Application is the initial part of the employment application process. Read the job bulletin thoroughly and apply for the position only if you feel reasonably certain that you meet the requirements. **TYPE OR PRINT RESPONSES IN INK AND FILL OUT THE APPLICATION COMPLETELY.** Clearly state your qualifications for the position. If a question does not apply to you, enter "N/A". **Incomplete or illegible applications may be disqualified. A SEPARATE APPLICATION FORM IS REQUIRED FOR EACH POSITION.** Applicants are permitted to provide additional relevant information. However, documents submitted with the application will not be returned. Please avoid any reference to religion, politics, race, sex, gender, age or other non-job related traits. Notify the Human Resources Office promptly if you have a change of address, phone, employer, or any other information in this Application.

LAST NAME Niederreuther		FIRST NAME Thomas		MIDDLE NAME Erich	
CURRENT RESIDENCE: 2837	STREET NUMBER Scenic Bend	STREET NAME			APT. NO.
CITY Modesto	STATE CA	ZIP CODE 95355	EMAIL ADDRESS (Email is the preferred method of communication) Niederreuther2000@hotmail.com		
PHONE NUMBERS 209-614-9375		DRIVER'S LICENSE NO. N7898700			
		STATE CA		CLASS C	
		EXPIRATION DATE 9-30-20			

PERSONAL INFORMATION

Are you legally eligible to be employed in the United States?

Yes ☒ No ☐

(Proof of identity and eligibility will be required upon employment)

If younger than 18 years of age, do you have a work permit?

Yes ☐ No ☐

What language(s) [other than English] do you comprehend and speak fluently?

Is there any reason that you may not be able to perform the essential job functions of the position for which you are applying?

Yes ☐ No ☒

If yes, do you believe you can perform the essential job functions of the position for which you are applying with a reasonable accommodation?

Yes ☐ No ☐

(According to the Americans with Disabilities Act (ADA), disabilities are irrelevant to the application process except for purposes of discussing the forms of accommodation which might enable the applicant to perform the essential functions of the position. All qualified individuals will be considered for the position, whether or not an accommodation is required. **NOTE: If you require an accommodation in order to fully participate in the application and testing process, please attach a request for the type of accommodation required or contact the Human Resources Office directly to discuss.**)

Have you ever worked for the City of Atwater?

Yes ☒ No ☐

If yes, in what position Reserve Police Officer and Police Officer

Do you have any relatives presently working for the City of Atwater?

Yes ☐ No ☒

If yes, please give name, relationship, position and Department

(Please call the Human Resources Office to determine if this would affect your eligibility for employment in this position.)

APPLICATION CONTINUES ON NEXT PAGE

EDUCATION AND EXPERIENCE

Refer to job bulletin for the position for which you are applying. List specific education, training, license, certificate and experience relevant to the position.

EDUCATION: (Indicate highest grade completed) (1 - 12) Juris Doctor	HIGH SCHOOL GRADUATE OR	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
	PASSED HIGH SCHOOL EQUIVALENCY TESTS (Attach copy of G.E.D.)	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

NAME OF EDUCATIONAL INSTITUTION, TRADE OR SERVICE SCHOOL	LOCATION	COURSE OF STUDY	DEGREE/DATE
Redwood High	Larkspur CA	High School	Diploma 1980
College of Marin	Kentfield CA	Liberal Arts	AA 1983
San Francisco Law School	San Francisco, CA	Law	JD 1987

CERTIFICATES OF PROFESSIONAL OR VOCATIONAL COMPETENCE, LICESSES, MEMBERSHIPS IN PROFESSIONAL ASSOC.

MILITARY SERVICE: U.S. Armed Forces IF YES, COMPLETE THE SECTION BELOW
Do you wish to claim Veterans Credit? List experience and skills obtained while in active duty

EXPERIENCE: List all of your work and other relevant experience (i.e. volunteer) in the last five (5) years, beginning with your most recent experience. Provide details regarding your experience which you believe are relevant to establish that you meet the minimum qualifications for the position. You may also provide information regarding experience from beyond five (5) years if you believe the experience is relevant to evaluation of your Application.

PERIOD OF EMPLOYMENT	TITLE and most important duties performed.	EMPLOYER'S NAME, ADDRESS AND PHONE
From Mo. Yr. 2001	Title Vice President/ General Counsel	C.W. Brower Inc.
To Mo. Yr. current	Duties Oversee Corporate Legal and General Managers	413 South Riverside Dr
Total Yrs. 17 Mos.		Modesto, CA 95354
Full-Time <input checked="" type="checkbox"/>		209-523-5447
Part-Time <input type="checkbox"/>		
Hours Per Week	Reason for Leaving Will continue part time if permitted , Family Business:	Name of Supervisor Libby Pomeroy
From Mo. Feb. Yr. 2011	Title Reserve Officer ; Contract Reserve ; Final ,Police Officer	City of Atwater
To Mo. Feb Yr. 2016	Duties	750 Bellevue Rd
Total Yrs. 5 Mos.	Patrol City : Respond to Police calls for service	Atwater , CA 95301
Full-Time <input checked="" type="checkbox"/>		209-357-6300
Part-Time <input checked="" type="checkbox"/>		
Hours Per Week 50 plus	Reason for Leaving Probation Release	Name of Supervisor
		Dick Wisdom & Todd Snyder
From Mo. Yr.	Title	
To Mo. Yr.	Duties	
Total Yrs. Mos.		
Full-Time <input type="checkbox"/>		
Part-Time <input type="checkbox"/>		
Hours Per Week	Reason for Leaving	Name of Supervisor

May we contact your present employer? Yes If no, explain

WORK RELATED REFERENCES List three individuals (NOT RELATIVES)

NAME	ADDRESS	TELEPHONE	OCCUPATION
Armando Echevarria	APD	209-357-6300	Police Chief
Todd Snyder	APD	209-357-6300	Administrative Sergeant
Dick Wisdom	POB 971 , Atwater CA 95301	209- 500-7275	Ret. APD Sergeant

AUTHORIZATION. By signing below, you agree that all of the following statements are true and correct:

The facts set forth in this Application and any supplemental information are all true and complete to the best of my knowledge. I understand that if I am employed by the City, falsified statements on this Application shall be considered sufficient cause for immediate discharge.

I understand that neither the completion of this Application nor any other part of the application process establishes any obligation for the City to hire me. If I am hired, I understand that either the City or I can terminate my employment at any time and for any reason, with or without cause and without prior notice, subject to relevant provisions of any applicable Memorandum of Understanding. I also understand that appointment to the position for which I am applying is expressly conditioned on verification of my right to work in the United States, and satisfactory completion of a medical examination (including drug screen), background check (including fingerprinting), credit check and/or other appropriate pre-employment investigation, as well as confirmation that I am qualified to perform the essential functions of the position for which I have applied.

I understand that I am required to abide by all policies, rules and regulations of the City.

Signature (Type Name) Thomas Niederreuther

Signature



Date 6-13-18

EQUAL OPPORTUNITY EMPLOYMENT

The City is an equal opportunity employer. Neither the City, nor any of its employees shall discriminate with respect to any personnel actions or terms and conditions of employment, including, but not limited to, recruiting, hiring, assignments, training, performance appraisal, compensation, benefits, promotion, disciplinary action, layoff or termination based upon race, color, religion (all aspects of religious beliefs, observance or practice including religious dress or grooming practices), sex, sexual orientation, gender (including gender identity, gender expression, and transgender status), marital status, registered domestic partner status, pregnancy (including childbirth, breastfeeding or related medical condition), alienage, national origin (including language use restrictions and possession of a driver's license issued under Vehicle Code §12801.9), ancestry, physical or mental disability, medical condition, age, citizenship status, military or veteran status, genetic information, political affiliation, position in a labor dispute, request for or use of protected leave, or any other basis protected by applicable federal, state or local law. The City's Equal Employment Opportunity Policy also prohibits discrimination based on the perception that anyone falls into any protected category, has any protected characteristic, or is associated with a person who falls within a protected category, or who has or is perceived as having any protected characteristic.

The City will comply with its obligations under the Americans With Disabilities Act and the Fair Employment and Housing Act related to engaging in an interactive process with applicants and providing reasonable accommodations during the application and examination process for individuals with disabilities. Requests for accommodations should be made prior to or at the time of application. For more information, please contact the City of Atwater Human Resources Department.

DISCLOSURE AUTHORIZATION AND RELEASE

"I hereby authorize all of the following: (1) the City to investigate all statements contained in this Application, (2) the City to contact any and all former employers or persons listed as references in this Application, and (3) all persons identified in this Application to provide any and all information they deem appropriate regarding my employment, job performance or other services to the City of Atwater and any of its employees, representatives and/or agents. All authorized information may be provided verbally and/or in writing. In addition to authorizing the release of any information as described herein, I hereby fully and completely waive and release any rights or claims I have or may have against any former employer and/or its employees and representatives, any person listed as a reference in this Application, and any education institution listed in this Application, from any and all liability, claims or damages that may directly or indirectly result from the use, disclosure or release of such information, whether the information is favorable or unfavorable to me."

Signature (Type Name) Thomas Niederreuther

Date 6-13-18

Signature





Applicant Self Identification Form

Required Information

Name: Thomas Niederreuther **Date of Application:** _____

Position(s) for which you are applying: Reserve Police Officer and/or Police Officer

Voluntary Information

The City of Atwater ("City") is a local agency that is required to comply with the regulations for equal employment opportunity. The City must track our applicants by gender and race/ethnicity and the position they applied for to the government. The City values diversity. For this reason, we invite you to indicate your gender and race/ethnicity below. This information is kept separate from your application.

Submission of this information is voluntary and refusal to provide it will not subject you to any adverse treatment. Responses will remain confidential within the Human Resources Department; and will be used only for the necessary information to include in our reporting requirements to the government. When reported, data will not identify any specific individuals.

Gender: ☒ Male ☐ Female ☐ Nonbinary

Definitions of race/ethnicity are on the next page (as defined by the Equal Employment Opportunity Commission).

Race/Ethnic Identification (check one):

Are you Hispanic or Latino? ☐ Yes ☒ No

If you answered "Yes" you have completed this form. If you answered "No" please select a race from the options below.

☒ White (Not Hispanic or Latino)

☐ Black or African American (Not Hispanic or Latino)

☐ Native Hawaiian or Other Pacific Islander (Not Hispanic or Latino)

☐ Asian (Not Hispanic or Latino)

☐ American Indian or Alaska Native (Not Hispanic or Latino)

☐ Two or More Races (Not Hispanic or Latino)

☐ I do not wish to disclose.

Definitions of Race/Ethnic Categories

Hispanic or Latino - A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.

White (Not Hispanic or Latino) - A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Black or African American (Not Hispanic or Latino) - A person having origins in any of the black racial groups of Africa.

Native Hawaiian or Other Pacific Islander (Not Hispanic or Latino) - A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

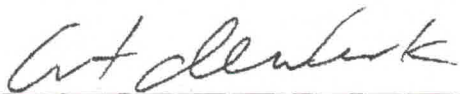
Asian (Not Hispanic or Latino) - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

American Indian or Alaska Native (Not Hispanic or Latino) - A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment.

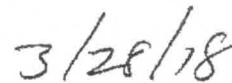
Two or More Races (Not Hispanic or Latino) - All persons who identify with more than one of the above five races.

AMENDMENT TO CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE

1. Whereas Thomas Niederreuther (Niederreuther) entered into a Confidential Settlement Agreement and General Release with the City Of Atwater(City) executed on December 1, 2016 settling an employment case in Federal District Court , Fresno Division (1:16-CV-00827-DAD-EPG). A true and correct copy of said Agreement is attached.
2. Whereas paragraph seven of said Agreement prohibits Niederreuther from seeking re-employment by the City unless explicitly waived by the parties.
3. Whereas the parties now desire to waive paragraph 7 and allow Niederreuther to apply for full time and/or reserve police officer positions.
4. It is hereby agreed that Niederreuther may apply for any and all employment opportunities with the City without being hindered by paragraph 7 of said Agreement.
5. All other terms and conditions of the Agreement shall remain the same.
6. This Amendment shall be construed as if jointly drafted by the parties.



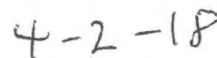
Art de Werk, Interim City Manager



Date



Thomas Niederreuther



Date

**CONFIDENTIAL SETTLEMENT AGREEMENT
AND GENERAL RELEASE**

This Confidential Settlement Agreement and General Release ("Agreement") is made and entered into between THOMAS NIEDERREUTHER ("Plaintiff") and the CITY OF ATWATER (the "City"). This Agreement is made pursuant to the following terms and conditions.

1. Pending and Future Legal or Administrative Actions.

Plaintiff represents there are no actions, whether in court, before any agency or otherwise, asserting claims by or on behalf of Plaintiff against the City, its affiliated organizations, present or former agents, attorneys, councilmembers, employees, insurance carriers, successors and assigns, including but not limited to William Novetzke, (collectively "Releasees") other than Plaintiff's lawsuit pending in the United States District Court for the Eastern District of California - Fresno Division, entitled "*Thomas Niederreuther v. City of Atwater and William Novetzke, et al.*," Case No. 1:16-CV-00827-DAD-EPG (the "Action").

2. General Release of Claims and Affirmations.

2.1 It is understood and agreed by and between the parties to this Agreement that in consideration for the City's agreement as set forth in paragraph 3 of the Agreement, and the other promises contained herein, Plaintiff completely releases and forever discharges Releasees from all causes of action, claims, judgments, obligations, damages, and liabilities of whatever kind and character, including, but not limited to, those claims that are asserted or that could have been asserted in the Action, and those arising under the Employee Retirement Income Security Act of 1974; the Americans with Disabilities Act; Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Civil Rights Act of 1866 (42 U.S.C. § 1981); the Civil Rights Act of 1871 (42 U.S.C. §§ 1985 and 1986); the Equal Pay Act of 1963; the Consolidated Omnibus Budget Reconciliation Act of 1985; the California Fair Employment and Housing Act, Gov. Code §§ 12940 *et seq.*; applicable California Wage Order provisions; the California Business and Professions Code §§ 17200 *et seq.*; the California Civil Code; the California Labor Code; and any other federal, state, or local insurance, human rights, civil rights, wage-hour, pension, or labor laws, rules and/or regulations, public policy, contract or tort laws, and any claim of retaliation under such laws, and any claim arising under common law including, but not limited to, causes of action for wrongful termination; constructive discharge; discrimination or harassment on the basis of age, sex, sexual orientation, religion, marital status, taking a leave of absence, race, disability or national origin or retaliation for opposing such discriminatory practice; intentional infliction of emotional distress; negligent infliction of emotional distress; fraudulent misrepresentation; negligent misrepresentation; fraud; invasion of privacy; false imprisonment; conspiracy to commit any act mentioned herein; breach of contract (whether oral or written, express or implied); breach of the implied covenant of good faith and fair dealing; interference with business advantage; defamation; interference with prospective economic advantage; interference with contractual relationship; violation of any national, state or local statute, law, or ordinance; wrongful termination in violation of public policy; and any other action, whether cognizable in law or in equity based upon any conduct up to and including the



City



Plaintiff

date of this Agreement, and Plaintiff agrees that he will not, from any source or proceeding, seek or accept any award or settlement therefrom. In the event Plaintiff institutes or is a party to any action or proceeding asserting a claim released in this Agreement, such action or proceeding shall be dismissed with prejudice, with an award of attorneys' fees and costs to the subject Releasee(s) incurred as a result of such action or proceeding, immediately upon presentation of this Agreement.

2.2 Plaintiff represents and warrants that Plaintiff has not assigned or subrogated any claim concerning Releasees or authorized any other person or entity to assert such a claim or claims on Plaintiff's behalf. Plaintiff will take all actions necessary to obtain dismissal of any claim asserted by any other individual or entity against any Releasee on Plaintiff's behalf and will not accept relief or recovery from any action that is not dismissed.

2.3 Plaintiff further agrees to waive any claim for damages occurring at any time after the date of this Agreement because of alleged continuing effects of any alleged discriminatory or other wrongful acts or omissions involving any Releasee, which occurred on or before the date of this Agreement. Plaintiff further agrees to waive any right Plaintiff may have to sue for injunctive relief against the alleged continuing effects of any alleged discriminatory or other wrongful acts or omissions occurring prior to and including the date of this Agreement.

2.4 Nothing in this Agreement prohibits or prevents Plaintiff from filing a charge or participating, testifying or assisting in any investigation, hearing or other proceeding before any federal, state, or local government agency. However, to the maximum extent permitted by law, Plaintiff agrees that if such an administrative claim is made, Plaintiff shall not be entitled to recover any individual monetary relief or other individual remedies.

2.5 To the extent permitted by law, Plaintiff waives any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on such a claim in which any Releasee is a party. Plaintiff shall take any necessary steps to dismiss himself from any class claims, including but not limited to opting-out of such claims.

2.6 Plaintiff affirms that Plaintiff has not divulged any confidential information of any Releasee and will continue to maintain the confidentiality of such information consistent with the City's policies and agreements(s) and/or common law.

2.7 Other than the settlement sum in paragraph 3, Plaintiff agrees and represents that no other form of monetary compensation is owed to him by any Releasee as of the date he executes this Agreement and that all employment-related compensation has been paid by any Releasee.

2.8 Plaintiff agrees to defend, indemnify and hold harmless the City for any liability or costs arising out of the failure to withhold taxes and the characterization of the settlement sum in paragraph 3. If payroll taxes are subsequently determined to be necessary, the City shall pay its share as the employer, but Plaintiff shall be responsible for his share and any and all penalties, interest and/or other costs associated therewith. Plaintiff acknowledges that the


City


Plaintiff

City has not provided any tax advice upon which Plaintiff has relied.

2.9 Plaintiff represents he is not aware of any liens and/or third-party claims of any type related in any way to the Action. Plaintiff shall be solely responsible for any such liens and/or claims that exist. Plaintiff agrees to defend, indemnify and hold harmless the City for any liability and costs, including any attorneys' fees, related to any such liens and/or claims that exist.

3. Settlement Sum.

Pursuant to the terms and conditions contained in this Agreement, including, without limitation the particular requirements set forth in Paragraph 6 herein, within 30 days of the City's counsel's receipt of (1) a copy of this Agreement fully executed by Plaintiff and his counsel and (2) fully executed W9s from Plaintiff and his counsel, and subject to the contingent City Council approval described in Paragraph 17, the City agrees to pay Plaintiff the sum of Sixty Thousand and 00/100 Dollars (\$60,000.00) (the "Settlement Sum"), paid jointly to "THOMAS NIEDERREUTHER and GAVRILOV & BROOKS" for all alleged damages, costs and attorneys' fees, upon which IRS Form 1099s shall issue to Plaintiff and his counsel. Plaintiff acknowledges he is currently not seeking any wage loss as damages, and none of the Settlement Sum shall be characterized as wages. Payment shall be made by mailing the checks to Plaintiff's counsel's office.

4. Denial of Liability.

Plaintiff acknowledges that Releasees have denied and continue to deny any and all liability for any claims relating to Plaintiff. Plaintiff expressly recognizes that the making of this Agreement does not in any way constitute an admission or concession of wrongdoing on the part of any Releasee.

5. Waiver of California Civil Code Section 1542.

5.1 Plaintiff agrees that by signing this Agreement and in return for the consideration described above, Plaintiff gives up any and all rights Plaintiff may have to obtain any monetary award against any Releasee, through any administrative agency, court or other forum. Plaintiff understands and expressly agrees that this Agreement extends to all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected, past or present, which Plaintiff has or may have against any Releasee, and all rights under Section 1542 of the California Civil Code are hereby expressly waived. Such Section reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by his or her must have materially affected his or her settlement with the debtor.

5.2 Plaintiff agrees that Plaintiff has read this Agreement, including the waiver of California Civil Code section 1542, and that Plaintiff has had the opportunity to


City


Plaintiff

consult counsel about the Agreement and specifically about the waiver of Section 1542, and Plaintiff understands the Agreement and the Section 1542 waiver, and freely and knowingly enters into this Agreement. Plaintiff acknowledges that Plaintiff may hereafter discover facts different from or in addition to those Plaintiff knows or now believes to be true with respect to the matters released or described in this Agreement, and Plaintiff agrees the releases and agreements contained herein shall be and will remain effective in all respects notwithstanding any later discovery of any such different or additional facts. Plaintiff hereby assumes any and all risk of any mistake in connection with the true facts involved in the matters, disputes or controversies described herein or with regard to any facts which are now unknown to Plaintiff relating thereto.

6. **Confidentiality and Non-Disparagement.**

6.1 Except as noted elsewhere in paragraph 6 of this Agreement, Plaintiff and Plaintiff's attorneys shall keep the existence, terms and conditions of this Agreement, completely and strictly confidential. Upon inquiry regarding the matter or any claim Plaintiff may have had against any Releasee, Plaintiff and/or Plaintiff's representatives shall state only that the matter has been resolved. **In the event of a breach of these confidentiality provisions, Plaintiff expressly agrees to pay \$5,000.00 as liquidated damages for each disclosure and expressly recognizes that the actual amount of damages flowing from said disclosure is not readily ascertainable and the sum of \$5,000.00 for each disclosure is a reasonable one. Plaintiff so agrees to be bound:**

DATED: 11-2-16, 2016



THOMAS NIEDERREUTHER


6.2 The only exceptions to paragraph 6.1 are as follows:

6.2.1 If the terms or conditions of this Agreement must be disclosed as required by law; or to any federal, state or local agency; or upon order of any court of competent jurisdiction in any action in which Plaintiff is a party; or if Plaintiff is subpoenaed as a witness; or


6.2.2 If the terms or conditions of this Agreement must be disclosed to remedy a breach of any term or condition herein; or

6.2.3 The Plaintiff may inform Plaintiff's legal counsel and his tax or financial advisors, on the further condition that Plaintiff advises such individuals in advance of disclosure that the terms and conditions of the Agreement are strictly confidential. Plaintiff agrees to be held liable for any and all unpermitted disclosures of this Agreement by individuals identified in this paragraph and that any such unpermitted disclosure of this Agreement shall subject the responsible party to liability pursuant to paragraph 6.1.

6.3 If disclosure is to be made pursuant to paragraph 6.2.1, Plaintiff or Plaintiff's representatives shall immediately, but in no event more than five (5) business days



City



Plaintiff

from receipt of a request or order for such disclosure, and at least thirty (30) days prior to any such disclosure, notify the City so, if it chooses, it can seek appropriate relief from a court or tribunal of competent jurisdiction, at the City's own expense, to prevent said disclosure.

6.4 Plaintiff agrees that as to any Releasee, he shall not engage in any defamatory conduct.

7. Waiver of Future Contractual Relationship and/or Employment.

Due to their irreconcilable differences, Plaintiff no longer wishes to pursue any relationship with the City, or with any of its affiliated organizations, successors and assigns. Therefore, Plaintiff agrees not to seek work with, or become in any way contracted or employed with, any such entity or organization. Plaintiff agrees that, if he knowingly or unknowingly applies for, is offered, accepts a position, or in any way becomes contracted with or employed with an entity described in this paragraph, the offer may be withdrawn or the relationship or contract may be severed immediately without notice or cause. Subject to paragraph 2.4 of this Agreement, Plaintiff waives any right to seek legal or administrative redress of any kind for events relating to the withdrawal of any offer, or termination, as described in this paragraph. The provisions in this paragraph may only be waived by explicit written consent of the Parties, specifically referencing this Paragraph.

8. Agreement Not to Assist Others In Commencing or Prosecuting Any Claim Against Releasees.

Plaintiff agrees and understands that, except as may be required by subpoena, court order, or other force of laws, and except as specified in paragraph 2.4, he shall not in any way knowingly assist any individual or entity in commencing or prosecuting any action or proceeding against any Releasee. Absent legal compulsion, and except as specified in paragraph 2.4, this Agreement bars Plaintiff from testifying, providing documents or information, advising, counseling or providing any other form of assistance to any person or entity who Plaintiff is aware, is considering making, or who is making, any claim against any Releasee.

9. Severability.

If any provision of this Agreement is declared illegal or unenforceable by any court of competent jurisdiction or arbitrator and cannot be modified to be enforceable, that provision will immediately become null and void, leaving the remainder of this Agreement in full force and effect. If Plaintiff takes any action to challenge any provision in this Agreement, or if any provision of this Agreement is deemed unenforceable in an arbitration or civil or administrative proceeding (regardless of whether Plaintiff instituted such proceeding), Plaintiff shall immediately return to the City the entire settlement sum in paragraph 3.

10. Construction.

The normal rule of construction that any ambiguity or uncertainty in writing shall be interpreted against the party drafting the writing shall not apply to any action on this


City


Plaintiff

Agreement. This Agreement shall be construed and interpreted in accordance with the law of the State of California.

11. Integration.

This Agreement represents the complete understanding between the parties. No other promises or agreements shall be binding or shall modify this Agreement unless signed by the parties hereto.

12. Execution.

This Agreement may be signed in counterparts and on separate signature pages. These separate signature pages will become part of the integrated Agreement. Facsimile or electronic executed copies of this Agreement shall be enforceable as if they were originals, and facsimile or email exchange of executed copies of this Agreement shall bind the parties.


13. Medicare.

13.1. General Statement for Consideration of any Medicare Interest. This settlement is based upon a good faith determination of the parties to resolve a disputed claim. The parties have not shifted responsibility of medical treatment to Medicare in contravention of 42 U.S.C. Sec. 1395y(b). The parties resolved this matter in compliance with both state and federal law.

13.2. Representations and Warranties By Plaintiff. Plaintiff and Plaintiff's counsel warrant that Plaintiff is not a Medicare beneficiary as of the date of this Agreement. Because Plaintiff is not a Medicare recipient as of the date of this Agreement, no conditional payments have been made to Medicare.

13.3. Hold Harmless. Plaintiff will indemnify, defend and hold Releasees harmless from any and all claims, liens, Medicare conditional payments and rights to payment, known or unknown. If any governmental entity, or anyone acting on behalf of any governmental entity, seeks damages including multiple damages from Releasees relating to payment by such governmental entity, or anyone acting on behalf of such governmental entity, relating to Plaintiff's alleged injuries, claims or lawsuit, Plaintiff will defend and indemnify Releasees, and hold Releasees harmless from any and all such damages, claims, liens, Medicare conditional payments and rights to payment, including any attorneys' fees sought by such entities. Plaintiff shall reasonably cooperate with any Releasee upon request with respect to any information needed to satisfy any reporting requirements under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, if applicable, and any claim for which Plaintiff is required to indemnify any Releasee under this paragraph. Plaintiff waives any and all future actions against any Releasee for any private cause of action for damages pursuant to 42 U.S.C. § 1395y(b)(3)(A).

13.4. Concluding Statement of Intent of the Parties. While it is impossible to accurately predict the need for medical treatment, this settlement is based upon a good faith


City


Plaintiff

determination of the parties in order to resolve a disputed claim. The parties have attempted to resolve this matter in compliance with both state and federal law, and it is believed that the settlement terms adequately consider and protect any Medicare interest and do not reflect any attempt to shift responsibility of treatment to Medicare pursuant to 42 U.S.C. Sec. 1395y(b). The parties acknowledge and understand that any present or future action or decision by CMS or Medicare on this settlement, or Plaintiff's eligibility or entitlement to Medicare or Medicare payments, will not render this release void or ineffective, or in any way affect the finality of this settlement.

14. Dismissal.

Within five (5) days of Plaintiff's counsel's receipt of the settlement proceeds described in paragraph 3, Plaintiff shall take any and all steps to have the Action dismissed with prejudice, with each party to bear their own costs and fees.

15. Mutual Representations, Covenants and Warranties.

Each of the parties to this Agreement represents, warrants, and agrees as follows:

15.1 Each party has had the opportunity to receive independent legal advice from his or its attorney with respect to the advisability of reaching a settlement in this action, the advisability of executing its agreement, and the ramifications of the meaning of California Civil Code section 1542.

15.2 No party has made any statement or representation to any other party regarding any fact relied upon in entering into this Agreement, and no party has relied upon any statement, representation or promise of any other party (or of any officer, agent, employee, representative or attorney for the other party) in executing this Agreement or in making the settlement provided for herein, except as expressly stated in this Agreement.

15.3 Each party has entered into this Agreement freely and voluntarily and has made an investigation of the facts pertaining to the settlement, this Agreement and all of the matters relating thereto.

15.4 Each party or responsible officer or agent thereof has read this Agreement and understands the contents hereof. Each of the persons executing this Agreement on behalf of the respective parties is empowered to do so and thereby binds this respective party.

16. ADEA Waiver.

Without limiting its scope in any way, Plaintiff certifies that this Agreement includes a knowing and voluntary waiver of any and all rights or claims that exist or that he has or may claim to have under the Age Discrimination in Employment Act ("ADEA"), as amended by the Older Workers' Benefit Protection Act of 1990 (29 U.S.C. §§ 621, et seq.). This ADEA release does not govern any rights or claims that might arise under the ADEA after the date this Agreement is signed by Plaintiff. Plaintiff acknowledges that:


City


Plaintiff

16.1 The consideration provided pursuant to this Agreement is in addition to any consideration that he would otherwise be entitled to receive;

16.2 Plaintiff has been and is hereby advised in writing to consult with an attorney prior to signing this Agreement;

16.3 Plaintiff has been provided a full and reasonable opportunity to study and consider this Agreement with his counsel before signing it, including a period of at least 21 days to consider it;

16.4 Plaintiff agrees that any modifications, material or otherwise made to this Agreement do not restart or affect in any way the original 21-calendar day consideration period;

16.5 To the extent that he takes less than 21 days to consider this Agreement prior to execution, Plaintiff acknowledges that he had sufficient time to consider this Agreement with his counsel; that he expressly, voluntarily and knowingly waives any additional time; and that his decision to accept in less than 21 days was not induced by fraud, misrepresentation and/or a threat to withdraw or alter the offer prior to the expiration of the 21-day period; and

16.6 Plaintiff is aware of his right to revoke this Agreement, within the 7-day period following the date he signs it and that the Agreement will not be effective or enforceable until the 7-day revocation period expires. Plaintiff further understands that he relinquishes any right to the consideration specified herein if he exercises the right to revoke the Agreement. Notice of revocation must be made by Plaintiff and be received by the Defendant's counsel no later than the 7th day after Plaintiff executes this Agreement. If the 7th day is a Saturday, Sunday, or legal holiday in California, he has until the next day which is not a Saturday, Sunday, or legal holiday.

17. Council Approval.

This Agreement is contingent upon the City obtaining City Council approval of the Agreement. The City shall seek such approval on or before its next regularly scheduled meeting.

DATED: December 1, 2016

PLAINTIFF:
THOMAS NIEDERREUTHER



DATED: December 1, 2016

CITY OF ATWATER

By: 

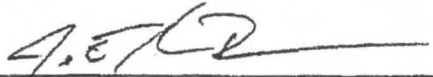
FRANK PIETNO
(print name)

Its: CITY MANAGER

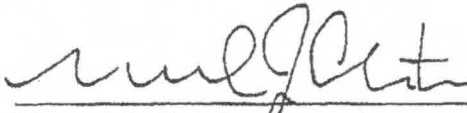

City


Plaintiff


AGREED TO AS TO FORM:



J. Edward Brooks
Attorneys for PLAINTIFF
THOMAS NIEDERREUTHER



Michael J. Christian
Attorneys for DEFENDANT
CITY OF ATWATER



City



Plaintiff

January 22, 2018

Art de Werk
Atwater Interim City Manager
750 Bellevue Road
Atwater, CA 95301

Re: Letter In Support of Tom Niederreuther Reinstatement

Dear Mr. de Werk:

My name is Dick Wisdom. I am a retired Atwater Police Administrative Sergeant. At the time of my retirement, in October of 2017, I was second in command of APD. I also served as Acting Chief for three months during 2017 while Chief Joseph was out of state attending the FBI Academy. I am writing to you to strongly recommend the reinstatement of Tom Niederreuther to his police officer position. I know Tom well and have worked with him as his supervisor both during the last 10 weeks of his full time police officer employment and during much of his tenure as a full time contract reserve police officer.

I can state in no uncertain terms that Tom was the victim of discrimination and that his job performance was equal to, and in some cases better than his peers (none of whom were terminated). On several occasions, I have also spoken with three other patrol sergeants that worked with Tom, Sergeant Echevarria, Sergeant Snyder, and Sergeant Smothers and they all shared the same opinion as I did about Tom and his performance and that he should not have been terminated. In fact, none of us were aware of, nor consulted prior to Tom's termination.

Tom's termination was orchestrated by Sergeant Novetzke, the single patrol sergeant, one out of five that did not support Tom. In early 2015, Novetzke opposed Tom's promotion from full time contract reserve to full time regular officer. I and other sergeants spoke with then Chief Pietro, recommending Tom for the full time regular position. Chief Pietro overruled Sergeant Novetzke and promoted Tom.

Apparently angry that he had been overruled, Sergeant Novetzke started harassing Tom with trivial and/or baseless write ups. One such complaint brought to me by Sergeant Novetzke was that Tom was not carrying the same workload as his peers. I reviewed the statistics, and found that Tom was in fact doing more work and making more arrests than most of his shift partners. After I overruled Sergeant Novetzke's complaints, I informed then Lieutenant Joseph of my findings. Lieutenant Joseph told me he agreed with my findings exonerating Tom, but for reasons unbeknownst to me, Lieutenant Joseph put Tom on a PIP program. On my recommendation, Lt. Joseph assigned Sergeant Snyder as the evaluating supervisor. Sgt. Snyder rode out with Tom for approximately a month. After that, Sergeant Snyder concluded that Tom was performing in a totally satisfactory manner. I thought that conclusion would end Novetzke's harassment of Tom, but it didn't.

As previously stated, I and the other three sergeants had no issues with Tom's performance, Sergeant Novetzke however, would not let go of his apparent vendetta. He would meet, almost on an everyday basis, with the Lieutenant in his office with the door closed. While, I was not privy to the content of those conversations, I am quite certain that they included "bad mouthing" Tom. Sergeant Novetzke also had similar and frequent closed door meetings with Chief Pietro. Since Sergeant Novetzke was the only supervisor who was against Tom, it stands to reason that he convinced the Lieutenant and Chief to terminate Tom.

Tom filed a discrimination lawsuit against the City. This prompted the City Attorney to hire an investigator to interview various APD officers. Two tenured officers confided in me that they were also harassed by Sergeant Novetzke and that they told the investigator about this. I also informed the investigator of the fact that the only supervisor that had a problem with Tom was Sergeant Novetzke and that I was of the opinion that Sergeant Novetzke's complaint was unfounded. I believe that Sergeant Novetzke's discrimination and harassment of Tom, as substantiated by that investigation, clearly resulted in the City having to pay out a \$60,000 settlement in Tom's case.

It should be noted that I previously considered Sergeant Novetzke a friend and originally supported his promotion to Corporal in 2013, however in 2016 after the two tenured officers confided in me how they too had been harassed by Sergeant Novetzke, coupled with what he did to Tom, I came to the realization that once Sergeant Novetzke had power over people, he abused that power by bullying officers whom he didn't like or otherwise were not part of his "clique". In retrospect, I feel that his promotion was a big mistake.

I believe that Sergeant Novetzke is also untrustworthy and will undermine others behind their back to get ahead. After I completed my three months as Acting Chief while Chief Joseph was at the FBI Academy, a very reliable and trustworthy source informed me that Sergeant Novetzke had stated in their presence that I was "an idiot" and that Sergeant Novetzke was the one who was really running the Department behind the scenes while Chief Joseph was gone. An absurd assertion.

When Sergeant Novetzke heard I was retiring, he was angling to get my position as the Administrative Sergeant. This would have put him in the number two position in the Department working as the Chief's "right hand man" on an everyday basis. I believed that if Sergeant Novetzke obtained the Administrative Sergeant position the consequences would be terrible for Department and the officers. I expressed my opinion to Chief Joseph that making Sergeant Novetzke Administrative Sergeant would be a grave mistake. Joseph listened to my recommendation and appointed Sergeant Snyder Administrative Sergeant, instead of Sergeant Novetzke. Many officers took the time to personally thank me for stopping Sergeant Novetzke from getting the Administrative Sergeant position.

Reiterating, I strongly believe that Tom was discriminated against and wrongfully fired and that he should be reinstated. Should you have any questions, please don't hesitate to contact me.

Sincerely,



Sergeant, Dick Wisdom (Ret.)

EXHIBIT 8

DICK WISDOM
P.O. Box 971
Atwater, CA 95301
(209) 500-7275

August 20, 2018

Lori Waterman
Atwater Interim City Manager
750 Bellevue Road
Atwater, CA 95301

Drew Bessinger
Atwater Interim Police Chief
750 Bellevue Road
Atwater, CA 95301

Re: Letter In Support of Tom Niederreuther Reinstatement

Dear Ms Waterman & Chief Bessinger:

My name is Dick Wisdom. I am a retired Atwater Police Administrative Sergeant. At the time of my retirement, in October of 2017, I was second in command of APD. I also served as Acting Chief for three months during 2017 while Chief Joseph was out of state attending the FBI Academy. I am writing to you to strongly recommend the reinstatement of Tom Niederreuther to his police officer position. I know Tom well and have worked with him as his supervisor both during the last 10 weeks of his full time police officer employment and during much of his tenure as a full time contract reserve police officer.

I can state in no uncertain terms that Tom was the victim of discrimination and that his job performance was equal to, and in some cases better than his peers (none of whom were terminated). On several occasions, I have also spoken with three other patrol sergeants that worked with Tom, Sergeant Echevarria, Sergeant Snyder, and Sergeant Smothers and they all shared the same opinion as I did about Tom and his performance and that he should not have been terminated. In fact, none of us were aware of, nor consulted prior to Tom's termination.

Tom's termination was orchestrated by Sergeant Novetzke, the single patrol sergeant, one out of five that did not support Tom. In early 2015, Novetzke opposed Tom's promotion from full time contract reserve to full time regular officer. I and other sergeants spoke with then Chief Pietro, recommending Tom for the full time regular position. Chief Pietro overruled Sergeant Novetzke and promoted Tom.

Apparently angry that he had been overruled, Sergeant Novetzke started harassing Tom with trivial and/or baseless write ups. One such complaint brought to me by Sergeant Novetzke was that Tom was not carrying the same workload as his peers. I reviewed the statistics, and found that Tom was in fact doing more work and making more arrests than most of his shift partners. After I overruled Sergeant Novetzke's complaints, I informed then Lieutenant Joseph of my findings. Lieutenant Joseph told me he agreed with my findings exonerating Tom, but for reasons unbeknownst to me, Lieutenant Joseph put Tom on a PIP program. On my recommendation, Lt. Joseph assigned Sergeant Snyder as the evaluating supervisor. Sgt. Snyder rode out with Tom for approximately a month. After that, Sergeant Snyder concluded that Tom was performing in a totally satisfactory manner. I thought that conclusion would end Novetzke's harassment of Tom, but it didn't.

As previously stated, I and the other three sergeants had no issues with Tom's performance, Sergeant Novetzke however, would not let go of his apparent vendetta. He would meet, almost on an everyday basis, with the Lieutenant in his office with the door closed. While, I was not privy to the content of those conversations, I am quite certain that they included "bad mouthing" Tom. Sergeant Novetzke also had similar and frequent closed door meetings with Chief Pietro. Since Sergeant Novetzke was the only supervisor who was against Tom, it stands to reason that he convinced the Lieutenant and Chief to terminate Tom.

Tom filed a discrimination lawsuit against the City. This prompted the City Attorney to hire an investigator to interview various APD officers. Two tenured officers confided in me that they were also harassed by Sergeant Novetzke and that they told the investigator about this. I also informed the investigator of the fact that the only supervisor that had a problem with Tom was Sergeant Novetzke and that I was of the opinion that Sergeant Novetzke's complaint was unfounded. I believe that Sergeant Novetzke's discrimination and harassment of Tom, as substantiated by that investigation, clearly resulted in the City having to pay out a \$60,000 settlement in Tom's case.

It should be noted that I previously considered Sergeant Novetzke a friend and originally supported his promotion to Corporal in 2013, however in 2016 after the two tenured officers confided in me how they too had been harassed by Sergeant Novetzke, coupled with what he did to Tom, I came to the realization that once Sergeant Novetzke had power over people, he abused that power by bullying officers whom he didn't like or otherwise were not part of his "clique". In retrospect, I feel that his promotion was a big mistake.

I believe that Sergeant Novetzke is also untrustworthy and will undermine others behind their back to get ahead. After I completed my three months as Acting Chief while Chief Joseph was at the FBI Academy, a very reliable and trustworthy source informed me that Sergeant Novetzke had stated in their presence that I was "an idiot" and that Sergeant Novetzke was the one who was really running the Department behind the scenes while Chief Joseph was gone. An absurd assertion.

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Reiterating, I strongly believe that Tom was discriminated against and wrongfully fired and that he should be reinstated. Should you have any questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dick Wisdom", written over a horizontal line.

Sergeant, Dick Wisdom (Ret.)

EXHIBIT 9



Atwater Police Department
City of Atwater

750 Bellevue Road • Atwater, CA 95301

Drew M. Bessinger, Interim Chief of Police
(209) 357-6396

August 22, 2018

Dick Wisdom
PO Box 971
Atwater, CA 95301

Mr. Wisdom

I received your letter of August 20th. I have never met Mr. Niederreuther, and I am not really in a position to address any issues involving him without his prior written consent. When and if Mr. Niederreuther applies for employment, I will consider his application as I would any other. You are free to tell him that if you'd like.

In your letter, you also refer to personnel issues from the past. These issues, as alleged, should have been dealt with by the previous administrations. They are not of departmental concern to me. Your disparaging comments, under the guise of a letter of recommendation, harm my assessment of your credibility more than the individual you attack. Please refrain from sending me any further correspondence that attacks my personnel unless you are reporting illegal or unethical conduct. I feel that due to your negative comments toward William Novetske, I must give him a copy of the letter out of fairness. I will give him an opportunity to speak with me regarding your comments if he sees fit.

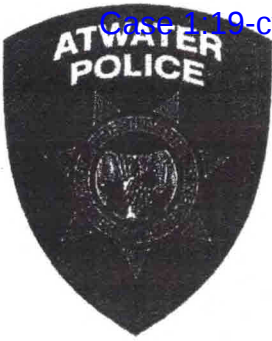
You indicate in your letter that Atwater Police Department officers have or are confiding in you about departmental issues. If officers are reporting any misconduct or illegal activity to you, please refer them to me or Sheriff Warnke. If you are aware of any illegal conduct, please contact me or Sheriff Warnke. I am attaching a form that explains the allegations reporting procedures.

Respectfully,

A handwritten signature in black ink, appearing to read "Drew M. Bessinger", is written over the typed name and title.

Drew M. Bessinger
Interim Chief of Police
Atwater Police Department

CC: Lori Waterman
William Novetzke



Atwater Police Department

City of Atwater

750 Bellevue Road • Atwater, CA 95301

Drew M. Bessinger, Interim Chief of Police

(209) 357-6396

ALLEGATIONS INSTRUCTIONS

It is important that we maintain the trust of our citizens. If you are aware of misconduct or corruption on the part of an employee of the Atwater Police Department, we want to know. We take these allegations very seriously. If you have either first-hand information, meaning you saw, heard, or have photos of the issue, or you have credible information, to include the names of the involved employees, witnesses, or other information that could be investigated, we ask that you:

1. Contact the Interim Chief of Police at (209) 357-6298 and a non-department investigator will be assigned to look into serious allegations, or it will be referred to an agency listed below
2. Contact the Merced County Sheriff's Office (209) 385-7424 and ask to speak to a supervisor to report public corruption
3. Contact the Merced County District Attorney's office (209) 385-7381 and tell them you are reporting public corruption
4. Contact the California Department of Justice (559) 457-5030 and tell them you are reporting public corruption
5. Contact the Federal Bureau of Investigation Fresno Office (559) 436-4474 and tell them you are reporting public corruption
6. If you want to report malfeasance involving public officials, the Merced Grand Jury is also an option

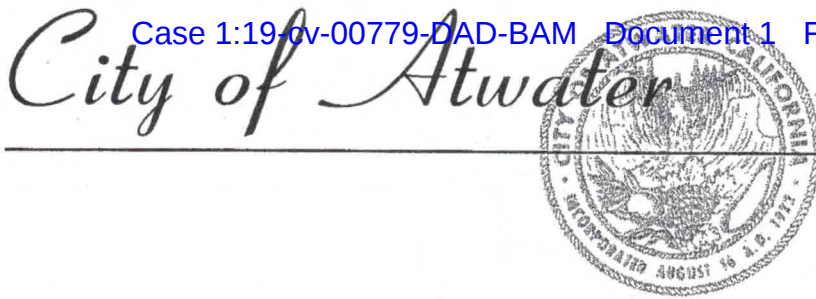
Please remember, anonymous information or vague details make it almost impossible for an investigation to be properly conducted. You need to be specific and leave your contact information so your allegation can be investigated. Also, by law misconduct allegations over 1 year old cannot be investigated after the fact. However, most criminal allegations can be investigated after the fact depending on the circumstances.

Respectfully,

A handwritten signature in black ink, appearing to read "Drew M. Bessinger".

Drew M. Bessinger
Interim Chief of Police
Atwater Police Department

EXHIBIT 10



HUMAN RESOURCES
750 BELLEVUE ROAD
ATWATER, CALIFORNIA 95301

OFFICE OF THE CITY MANAGER

September 6, 2018

Thomas Niederreuther
2837 Scenic Bend
Modesto, CA 95355

Re: Application with the Atwater Police Department

Mr. Niederreuther:

The City of Atwater ("City") is in receipt of your application for the position of either Reserve Police Officer or Police Officer.

Pursuant to paragraph 7 of the December 1, 2016, settlement agreement between you and the City, you are not entitled to employment with the City. Paragraph 7 states, in part, that you agreed not to seek re-employment with the City in exchange for a financial settlement of Sixty Thousand Dollars (\$60,000). Additionally, Paragraph 7 states that this condition may only be waived by explicit written consent of all parties. Therefore, we are unable to process your application for employment or offer you employment.

We wish you luck in your further endeavors.

Sincerely,

A handwritten signature in cursive script that reads "Lori Waterman".

Lori Waterman
City Manager
City of Atwater

EXHIBIT 11

Thomas E. Niederreuther
2837 Scenic Bend
Modesto CA 95355
Phone: (209) 614-9375
Niederreuther2000@hotmail.com

September 13, 2018

VIA EMAIL AND U. S. MAIL

Ms. Lori Waterman
City Manager
City of Atwater
750 Bellevue Road
Atwater, CA 95301

Re: Application Rejection

Dear Ms. Waterman:

I am in receipt of your letter dated September 6, 2018 rejecting my application on the alleged basis of paragraph 7 of the settlement agreement with the City dated December 1, 2016.

Notably and conspicuously absent from your letter is any reference to the "Amendment to Confidential Settlement Agreement and General Release" executed by me and Art de Werk on behalf of the City prior to his resignation as Interim City Manager. I know both you and the HR Director are well aware of this Amendment since I provided copies to both of you along with my application under cover letters dated 6-13-18.

In reviewing the original Agreement, the only "parties" are the City and I (see the opening paragraph above paragraph 1). Furthermore the only operative signatures on the document are then City Manager Frank Pietro's and mine. Attorney signatures are "as to form" only and the attorneys are not considered "parties". Thus the Amendment was signed by "all parties" and is clearly valid. Your attempt to utterly ignore it appears disingenuous, at best.

I would like to move forward in good faith in the testing process. Please consider this letter as a good faith attempt to facilitate same. If you intend to disavow or otherwise fail to recognize the Amendment signed by Mr. de Werk, please provide the City's alleged basis for doing so on or before the close of business on Thursday, September, 27 2018.

If you fail to respond by the deadline and/ or fail to provide a clear and convincing basis for disregarding the Amendment, I will be forced to conclude that the rejection of my application is nothing more than a thinly veiled reaffirmation and continuation of the original discrimination I suffered at the hands of the Pietro/ Joseph administration and/or further retaliation for my asserting my employment rights subsequent to my unlawful 2016 termination.

I gratuitously offered to return the \$60,000 settlement upon full reinstatement to a full time officer position. You should carefully consider how you respond to me. Do you want to bring money back to the City and correct the wrongs of the prior administration, or would you rather reaffirm those wrongs and embroil the City in another costly lawsuit; this time for discrimination/retaliation in hiring practices?

Thank you for your attention to this matter.

Sincerely,



Tom Niederreuther

cc: City Council

EXHIBIT 12

City of Atwater



OFFICE OF THE CITY MANAGER
750 BELLEVUE ROAD
ATWATER, CA 95301
(209) 357-6201

TO: Police Chief Samuel Joseph
FROM: Lori Waterman, City Manager
RE: Final Notice of Termination
DATE: November 15, 2018

Pursuant to Government Code section 3304, subdivision (c) and Section 2.2 of your Employment Agreement ("Agreement") with the City of Atwater ("City"), this Notice is to inform you of my decision to terminate your employment as Police Chief with the City for willful and other misconduct. Your termination will be effective immediately. Pursuant to the City's Municipal Code and Government Code section 3304, subdivision (c), my decision is final.

I. RECOMMENDATION FROM ADMINISTRATIVE APPEAL HEARING

The City issued your proposed Notice of Discipline and notice of appeal rights on September 28, 2018. You notified the City of your decision to appeal your proposed discipline, pursuant to Government Code section 3304, subdivision (c), on September 29, 2018.

Your administrative appeal hearing was scheduled for December 5-7, 2018. On November 7, 2018, your representative notified the City and Retired Justice Steven Vartabedian, the selected Arbitrator appointed to hear your appeal, that you refused to participate in the scheduled administrative appeal hearing. On November 9, 2018, the City informed you that, since you refused to participate in the scheduled hearing before Mr. Vartabedian, the City would move forward with the disciplinary process.

On November 13, 2018, your representative notified the City that you were not withdrawing your appeal, but again refused to attend the scheduled hearing date before Mr. Vartabedian. The City again notified you on November 14, 2018 of the date and time of your scheduled appeal hearing before Mr. Vartabedian. On November 15,

2018, your representative again informed the City that you refused to attend or participate in the scheduled appeal hearing before Mr. Vartabedian.

Since you refused to provide any oral or written response to the information cited in the Notice of Intended Discipline, or otherwise participate in the scheduled administrative appeal hearing, I only have the evidence gathered during the administrative investigation and additional information attached to the Notice of Intended Discipline to rely on in making my final decision. Based on my careful review of all the evidence, I have decided to uphold the proposed termination.

II. RULES VIOLATED

A. *Lexipol*

- (1) Policy 205.3 Prohibited Use of Email: Sending derogatory, defamatory, obscene, disrespectful, sexually suggestive and harassing or any other inappropriate messages on the email system is prohibited and may result in discipline.
- (2) Policy 322.3.1: Supervisors shall not knowingly issue orders or directives that, if carried out, would result in a violation of any law or department policy. Supervisors should not issue orders that conflict with any previous order without making reasonable clarification that the new order is intended to countermand the earlier order.
- (2) Policy 322.5.1 Laws, Rules and Orders:
 - (a) "Violation of or ordering or instructing a subordinate to violate any policy, procedure, rule, order, directive, requirement or failure to follow instructions contained in department or City manuals."
 - (c) "Violation of federal, state, local or administrative laws, rules or regulations."
- (3) Policy 322.5.7 Efficiency:
 - (b) Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency, or delay in performing and/or carrying out proper orders, work assignments, or the instructions of supervisors without a reasonable and bona fide excuse.
 - (e) Disparaging remarks or conduct concerning duly constituted authority to the extent that such conduct disrupts the efficiency of this department or subverts the good order, efficiency, and

discipline of this department or that would tend to discredit any of its members.

- (i) Any act on- or off-duty that brings discredit to this department.
- (4) Policy 322.5.9 Conduct:
 - (f) Discourteous, disrespectful, or discriminatory treatment of any member of the public or any member of this department or the City.
- (5) Policy 701.6 Use of PCD:
 - (g) Using PCDs to harass, threaten, coerce or otherwise engage in inappropriate conduct with any third party is prohibited. Any member having knowledge of such conduct shall promptly notify a supervisor.

B. *Penal Code*

- (1) Penal Code section 32310: "Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, buys, or receives any large-capacity magazine is punishable by imprisonment in a county jail not exceeding one year of imprisonment pursuant to subdivision (h) of Section 1170."
- (2) Penal Code section 32400: "Section 32310 does not apply to the sale of, giving of, lending of, possession of, importation into this state of, or purchase of, any large-capacity magazine to or by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties, whether on or off duty, and where the use is authorized by the agency and is within the course and scope of their duties."
- (3) Penal Code section 32415: "Section 32310 does not apply to the loan of a lawfully possessed large-capacity magazine between two individuals if all of the following conditions are met:

- (a) The person being loaned the large-capacity magazine is not prohibited by Chapter 1 (commencing with Section 29610), Chapter 2 (commencing with Section 29800), or Chapter 3 (commencing with Section 29900) of Division 9 of this title or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms or ammunition.
- (b) The loan of the large-capacity magazine occurs at a place or location where the possession of the large-capacity magazine is not otherwise prohibited, and the person who lends the large-capacity magazine remains in the accessible vicinity of the person to whom the large-capacity magazine is loaned."

III. FACTS PERTAINING TO WILLFUL MISCONDUCT

Willful misconduct means dereliction of duty; voluntary or intentional improper behavior. Any act of willful misconduct constitutes grounds for discipline, up to and including termination.

A. Issuing Firearm with a High Capacity Magazine to Non-Sworn City Employee

In or about September 2017, you ordered Sgt. David Sarginson to issue a .9 mm handgun with a high capacity magazine to a code enforcement officer who failed a psychological examination and was not a sworn peace officer. This employee was only asked to return the weapon after Sgt. Echevarria stepped in as Interim Police Chief. You knew this employee failed a psychological examination, yet you allowed him to possess and carry a City-issued firearm with a high-capacity magazine anyway, in violation of the Penal Code. Presumably, had you not been placed on paid administrative leave, this employee would have retained a dangerous City issued weapon despite not being legally allowed to possess a high capacity magazine and after failing a psychological exam.

You testified during your Administrative Investigation ("AI") interview that former City Manager John Bramble directed you to issue the employee a firearm so that he could obtain POST re-certification. However, you knew the employee had not passed his psychological exam and would not be re-tested for another six (6) months. Furthermore, even if Mr. Bramble instructed you to assist the employee with obtaining his POST re-certification – at the very most – you should have only allowed the employee to use the firearm at the range under your supervision, and then retrieved

the firearm before the employee left the range. Instead of that, you allowed a civilian to possess a firearm with a high capacity magazine with no supervision. As a police officer with more than thirty (30) years' experience and the City's Chief of Police, you are surely aware that allowing a civilian who just failed a psychological examination to possess and carry a .9 mm handgun with a high capacity magazine is illegal, creates serious liability for the City, and demonstrates very poor judgment.

You knew this employee failed his psychological examination because you spoke the doctor who administered the exam. You told the investigator that the doctor told you the employee could just re-test however, the doctor issued a report that stated the employee may not re-test for another six (6) months. Despite this employee's questionable psychological background, you still issued him a firearm with a high capacity magazine in violation of the Penal Code. Your conduct constitutes willful misconduct.

B. Refusal to Address Issues with the Evidence Room and Locker

You knew the City's police department evidence room and locker were not properly secured and was open to anyone who wished to enter. The evidence locker was simply an open safe because no one had the combination to lock it. The refrigerator where biological evidence was stored did not work properly and was overflowing causing the door to open.

You were very familiar with the 2010 POST report that directed the City to undertake significant changes to the evidence room and you were Chief of Police for a year before being placed on paid administrative leave. Despite these facts, you took no action to at least ensure that evidence was not tampered with, removed, or so degraded as to be useless in a criminal prosecution.

Your failure to address issues with the City's evidence room has raised serious concerns about the integrity of the chain of custody for evidence in ongoing criminal cases. District Attorney Larry Morse stated he was required to disclose the state of the evidence room to defendants and their attorneys because it may constitute exculpatory evidence. The evidence room and locker were also reported to the California Attorney General's Office.

Your failure to address the issues with the evidence room and locker may threaten public safety by risking possible convictions or resulting in overturned convictions. Your desk was just ten (10) feet from the evidence room while you were Chief of Police.

Yet you never made any attempt to address the free and open access to evidence in criminal cases.

During your AI interview, you blamed past Chiefs of Police and said you did not have the resources to repair the evidence room. However, you never requested any investigation or study of the evidence room and locker. You never even installed a sign in sheet to track who came and went from the evidence room. Yet, as soon as an Interim Police Chief was appointed, the evidence room and locker issues were immediately addressed. You further alleged that former Sacramento County Sherriff John McGuinness was friends with former City Manager Art de Werk and, as a result, is only identifying these issues to be unfair to you. Yet, when Chief Bessinger was appointed, he had similar concerns about the evidence room and locker as did POST in 2010 and the AG's office now. Instead of taking any responsibility for your actions, you continue to pass the blame on to others.

As an experienced and educated police chief, one who has attended the FBI academy, you were most certainly aware that the City's evidence room and locker fell well below the minimum standards for the operation of a police evidence room. Your failure to take any action on the state of the evidence room since being appointed police chief and refusal to take any responsibility for your actions constitutes willful misconduct and a violation of the City's Personnel Rules.

C. Inappropriate Order to Subordinate Officer

During his AI interview, former Code Enforcement Officer Fabian Velazquez testified that you ordered him to remove and copy a letter he found on a Finance Department employee's desk. This letter was not addressed to you and was on someone else's desk. Rather than admonish your subordinate for looking at or taking documents off other people's desks, you ordered your subordinate to take the letter off the Finance Department employee's desk without her permission, photocopy it, and send it to you. Regardless of what the letter was about or to whom you provided the letter, it is was unprofessional and inappropriate for you to order a subordinate to copy and give to you a document he had taken without permission from another employee's desk. During your AI interview, you admitted you told Velazquez to copy and send you the letter but said that you provided it to de Werk. However, you also stated you only asked for the letter in order to give it to your attorney. However, in a text message, it is clear you instructed Velazquez to copy the letter and disseminate it all over the Police Department because it was critical of de Werk. You texted, "*Fabian somehow get this paper put it everywhere in the PD on the ground print up copies they have to read this she fucked them.*"

If this correspondence was relevant to you or the Police Department, it would have been provided to you by City staff. Your decision to countenance a subordinate to invade someone else's work space; remove and copy a document; and then distribute that document to as many people as possible is terribly inappropriate. The City is not your personal fiefdom wherein you are entitled to know every detail of City business. Your conduct violates the City's Personnel Rules and constitutes willful misconduct.

D. Intentionally Harassing and Intimidating Behavior

The AI revealed that you regularly engaged in harassing, insulting, and intimidating behavior toward your subordinates. You improperly questioned officers about concerted union activity, insulted officers to each other, and repeatedly threatened to terminate employees and "ruin their lives." After a union meeting in late 2017, you asked at least two officers what occurred at the meeting. As a supervisor, it is inappropriate for you question employees about confidential union matters.

Furthermore, questioning employees about union activity creates liability for the City in the event you decide to take any adverse action against an employee because he or she may allege retaliation. As an experienced supervisor, you are surely aware of the sanctity of protected union activity.

Additionally, you repeatedly argued that even if the employee prevailed during appeal and returned to work, *"they would be financially ruined, and their wife and kids would hate them."* Your conduct constitutes an intentional violation of the City's Personnel Rules.

Finally, the AI also revealed that you used a City computer and equipment during work hours to send insulting memes and photos about subordinate officers to other members of the department. You also regularly used profane language in communicating to employees. You sent two photos that contained caricatures of three employees to a City code enforcement officer. Harassing, offensive, and intimidating conduct violates the City's Personnel Rules and further exposes the City to significant liability. As Chief of Police, it is your duty to protect the City and set the highest standards for conduct. Your intentional discourteous treatment of subordinate officers violates the City's Personnel Rules and constitutes willful misconduct.

IV. OTHER MISMANAGEMENT ISSUES

Government Code section 3304, subdivision (c) states that a police chief may be removed from office for reasons including incompatible management styles. The AI revealed that you have engaged in mismanagement and poor supervisory skills that are incompatible with the City's goals and standards for department heads.

A. Failure to Properly Supervise Subordinates

The AI revealed that you did not properly supervise subordinate employees responsible for tasks such as evidence tracking and logging and sealing juvenile records. During your AI interview, you blamed Administrative Supervisor Tyna Lamison for the complete lack of evidence control at the department and Sgt. Wisdom for failure to seal juvenile records. You never made any attempt to address Lamison's alleged failure of evidence control and certainly never attempted to resolve issues with the evidence room.

B. Failure to Properly Maintain Records and Firearms

During the AI, it was revealed that you left an unsecured firearm, background investigation materials, internal affairs documents, and training records in an unsecured locker. After you were placed on paid administrative leave, former Interim Police Chief Echeverria and Tyna Lamison cleaned out the locker used by you during your employment, which included several items that should have been properly filed and secured. Your locker was accessible to any number of people, including custodial staff. Background materials and internal affairs documents are confidential and should not be accessible to anyone.

Additionally, you had an unsecured firearm in your locker that was also accessible to anyone. As the Chief of Police, you are obligated to set the best possible example for performance and compliance with the City rules. Instead, you demonstrated carelessness and lack of concern for safety and confidential documents.

C. Disclosure of Confidential Information

The AI revealed that you intentionally disclosed confidential information to third party non-City employees for your own personal gain, including a draft City employment agreement and confidential attorney-client communications. You testified that you believed you had the right to waive the attorney-client privilege even though the privilege is held by the City. You are an experienced City employee and the former Public Information Officer for the City Police Department. It is inconceivable that you

were not aware that you may not waive privilege and produce confidential City materials to non-City third parties for personal gain.

Furthermore, you stated you may have sent out a draft employment agreement because you were not aware of any rule that prevented you from distributing confidential draft employment agreements. Your complete refusal to take any responsibility for your poor judgment demonstrates your mismanagement. You are not a rank and file employee. You are the Chief of Police. Accordingly, you are assumed to possess good judgment and a comprehensive understanding of your obligations to the City.

D. Irresponsible Handling of Background Investigation

In or about September 2017, you hired a Police Officer applicant with a criminal arrest record. You knew the applicant had a criminal arrest record and assigned another employee who was friends with the applicant to conduct the background investigation. Even if this candidate had no history of criminal conduct, asking an applicant's friend to conduct a background investigation constitutes very poor judgment. This applicant was not only arrested but convicted of a felony.

Regardless of the facts or circumstances underlying that arrest or conviction, at the very least – you should have assigned a neutral person to conduct the background investigation before agreeing to hire someone as a police officer who was previously a convicted felon. This could have created millions of dollars in liability for the City if this employee was involved in an on-duty use of force incident or if he committed another crime. Your poor decision to assign this applicant's background investigation to the applicant's friend constitutes mismanagement and demonstrates an incompatible management style.

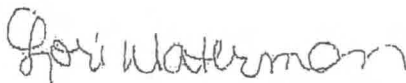
V. WARNING AGAINST RETALIATION

This provision is to notify you that it is illegal and inappropriate to retaliate against any person who has participated in complaining or providing information regarding your alleged misconduct, or anyone you suspect may have participated in complaining or providing information regarding your alleged misconduct.

VI. DOCUMENTS RELIED UPON IN SUPPORT OF FINAL NOTICE OF TERMINATION

Documents listed in Nos. 1-6 were attached to the Notice of Proposed Discipline dated September 28, 2018. Please let the City know if you need any copies. Documents listed in Nos. 7-13 are attached hereto.

1. Investigation Report
2. Employment Agreement
3. Government Code section 3304, subdivision (c)
4. Penal Code sections 32310, 32400, and 32415.
5. Lexipol Policies 322.3.1, 322.5.1, 322.5.7, 322.5.9, and Policy 701.6.
6. Correspondence between District Larry Morse and Interim Chief Dew Bessinger dated July 9, 2018.
7. Email correspondence dated November 7, 2018 between Michael Rains, the City, and Hon. Steven Vartabedian.
8. Correspondence between Kimberly A. Horiuchi and Michael Rains regarding Samuel Joseph Appeal dated November 9, 2018.
9. Email correspondence between Michael Rains and Kimberly A. Horiuchi dated November 13, 2018.
10. Email correspondence between Michael Rains and Kimberly A. Horiuchi dated November 14, 2018.
11. Correspondence between Douglas L. White and Michael Rains dated November 14, 2018.
12. Correspondence between Michael Rains and Douglas White dated November 15, 2018.
13. Correspondence between Douglas White and Michael Rains dated November 15, 2018.



Lori Waterman
City Manager
City of Atwater

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Thomas E. Niederreuther

DEFENDANTS

City of Atwater

(b) County of Residence of First Listed Plaintiff Stanislaus County

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Merced County

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Keith M. Velleca
One Market Street #3600
San Francisco, CA 94105 415-293-8048

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 USC 621, et seqBrief description of cause:
Age Discrimination and Retaliation**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.**DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

SIGNATURE OF ATTORNEY OF RECORD

DATE
06/03/2019

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Case 1:19-cv-00779-DAD-BAM Document 1-1 Filed 06/03/19 Page 2 of 2
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. **Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.